

Court File No. CV-25-00735458-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT  
ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI INC.**

Applicants

**APPLICATION RECORD  
(CCAA Application returnable January 28, 2025)**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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Court File No. \_\_\_\_\_

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Applicants

**NOTICE OF APPLICATION**

**(CCAA Application Returnable January 28, 2025)**

**TO THE RESPONDENTS:**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the Applicants. The claim made by the Applicants appears on the following page.

**THIS APPLICATION** will come on for a hearing

- ☐ In person
- ☐ By telephone conference
- ☒ By video conference

On January 28, 2025, at 9:00 am (Toronto time) before the Honourable Justice Osborne of the Ontario Superior Court of Justice (Commercial List), at a Zoom link to be circulated to the service list in advance of the hearing date.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.



**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local Registrar

Address of 330 University Avenue  
court office: Toronto, Ontario M5G 1E6

## APPLICATION

### THE APPLICANTS MAKE THIS APPLICATION FOR<sup>1</sup>:

1. Joriki TopCo Inc. (“**Joriki TopCo**”) and its wholly-owned Canadian operating subsidiary, Joriki Inc. (“**Joriki Canada**”, and together with Joriki TopCo and its other subsidiaries, “**Joriki**” or the “**Company**”) make an Application for:

(a) an initial order (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), substantially in the form attached at Tab “3” of the within Application Record, *inter alia*:

- (i) abridging the time for and validating the service of this Notice of Application and the Application Record;
- (ii) ordering that the Applicants are parties to which the CCAA applies and that the proceedings commenced by Joriki Canada by the filing of a notice of intention to make a proposal (the “**NOI**”) under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) bearing estate/court file no. 31-3170452 are taken up and continued under the CCAA;

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<sup>1</sup> All capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the Affidavit of Michael G. Devon sworn January 22, 2025 (the “**Devon Affidavit**”). Unless otherwise stated, all monetary amounts referenced herein are in Canadian dollars.

- (iii) appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as an officer of this Court to monitor the assets, business and affairs of the Applicants (the “**Monitor**”) in these CCAA proceedings;
- (iv) staying all proceedings and enforcement processes taken or that might be taken in respect of the Applicants, their business or property, the former, current or future directors and officers of the Applicants, or the Monitor, until and including February 28, 2025 (the “**Initial Stay Period**”), or such later date as this Court may order;
- (v) approving a key employee retention plan (“**KERP**”) on the terms described in the Devon Affidavit;
- (vi) approving the execution by the Applicants of a DIP Financing Term Sheet (the “**DIP Term Sheet**”) expected to be entered into with the Senior Lenders (in such capacity, collectively, the “**DIP Lender**”), providing for borrowings of up to a maximum principal amount of \$1,200,000 (the “**DIP Loan**”);
- (vii) authorizing the Applicants to continue to utilize their cash management system and to maintain the banking arrangements already in place for the Applicants;
- (viii) granting the following priority charges over the assets and property of the Applicants, and ordering that such charges, as among them, shall have the following relative priorities:

- (A) *first* – a charge in favour of the Monitor (A&M), counsel to the Monitor and counsel to the Applicants (Goodmans LLP) in respect of their fees and disbursements (the “**Administration Charge**”), to a maximum amount of \$700,000, pending further Order of the Court;
- (B) *second* – a charge in favour of the directors and officers of the Applicants (the “**Directors’ Charge**”), to a maximum amount of \$200,000, pending further Order of the Court; and
- (C) *third* – a charge securing any payments to the key employees under the KERP, to a maximum amount of \$487,500, pending further Order of the Court; and
- (D) *fourth* – a charge in favour of the DIP Lender (the “**DIP Lender’s Charge**”), to a maximum amount of \$1,200,000 plus interest, fees and expenses, pending further Order of the Court;
- (ix) ordering that the Applicants meet the criteria prescribed by the *Wage Earners Protection Program Act* (Canada) (“**WEPP**”) and its regulations; and
- (x) granting such further and other relief as counsel may request and this Court deems just; and
- (b) an order, substantially in the form attached at Tab “5” of the within Application Record, *inter alia*, approving the auction and liquidation services agreement

entered into between Joriki Inc. and Maynards Industries II Canada Ltd. dated January 22, 2025 (the “**Pickering Auction and Liquidation Services Agreement**”) in respect of Joriki Canada’s assets at its Pickering facility.

**THE GROUNDS FOR THE APPLICATION ARE:**

2. Headquartered in Scarborough, Ontario, Joriki was in the business of manufacturing and packaging consumer beverages, including juices and plant-based beverages. It operated its business from three production facilities in Canada (the Toronto and Pickering facilities in Ontario, and the Delta facility in B.C.), and one in the United States (the Pittston facility in Pennsylvania).

3. Joriki historically operated a profitable business focused on its GTA operations, before expanding to British Columbia in 2010. Over the past several years, aided by investments from its controlling shareholder and secured debt financing, the Company sought to grow its operations, including expanding capabilities at its existing facilities and, in 2022, commencing the build-out of a new U.S. production facility in Pittston, Pennsylvania.

4. While the Company was very successful in growing its top line revenue, that growth, coupled with ongoing interest expense and various operational challenges, led to the Company suffering a net loss (albeit a relatively small one) in 2022. The Company’s losses expanded significantly in 2023 as a result of a delay in the completion and commissioning of the Pittston facility and, thereafter, challenges reaching expected operational capacity and efficiencies there. In response, the Company developed a comprehensive turnaround plan for Pittston and, in early 2024, obtained additional financing from its controlling shareholder

to fund necessary capital improvements, and negotiated covenant relief and other concessions from its lenders.

5. Amid Joriki's turnaround efforts, in July 2024, the Pickering facility was implicated in a Canada-wide recall of Silk<sup>®</sup> and Great Value<sup>®</sup> plant-based beverages as a result of a *listeria monocytogenes* outbreak (the "**Recall**"). The Recall had a severe negative impact on the Company's business, leading to a shut-down of the Pickering facility (which in FY2024 was Joriki's largest production site by case volume), production pauses at other facilities, the loss of key customers, significantly reduced revenues, additional costs addressing the Recall and a related regulatory investigation, a class action lawsuit and the threat of additional litigation.

6. Additionally, the Recall also led to defaults under the Senior Credit Agreement and the Subordinate Credit Agreement. Joriki does not have the ability to repay the significant secured debt obligations outstanding thereunder, which total in excess of \$209 million.

7. In August 2024, the Company engaged advisors to assist in reviewing and assessing its strategic options and alternatives. Following this review, the Company, with the assistance and under the oversight of A&M, undertook the Sale Process to solicit interest in one or more sales or other value maximizing transactions.

8. While the Sale Process generated strong interest in various potential transactions for the Company's Canadian business, as well as a potential transaction for its U.S. business, the Company's operating losses continued to mount. Following the loss of a key customer and certain potential purchasers advising the Company in late December 2024 that they

would not be pursuing transactions, the Senior Lenders advised they were no longer prepared to fund the Company's business as a going concern.

9. Accordingly, the Company ceased active business operations and, on December 31, 2024, terminated the employment of substantially all its employees save for a small group to assist in wind-down activities. Prior to doing this, Joriki Canada also filed the NOI and A&M was appointed as proposal trustee. On January 12, 2025, Joriki USA Inc., the Company's U.S. operating subsidiary, filed a petition under Chapter 7 of the United States Bankruptcy Code before the United States Bankruptcy Court for the District of Delaware.

10. Notwithstanding the cessation of active business operations, the Applicants, in consultation with their professional advisors, A&M and the Senior Lenders, continue to believe that one or more value maximizing "turn-key" transactions can still be completed in respect of the Toronto and Delta facilities, including the possibility of transactions that would preserve customer and supplier relationships and could include the possibility of some of Joriki Canada's remaining and former employees being offered employment by a purchaser. Joriki Canada has recently entered into a letter of intent with a prospective purchaser of its assets at the Delta facility and is in negotiations in respect of a transaction for its assets at the Toronto facility.

11. In light of the foregoing, the Applicants, with the support of the Senior Lenders, have commenced these proceedings in order to maintain the status quo while they pursue transactions for their assets at the Toronto and Delta facilities on an expedited timeframe, as well as a liquidation of the Pickering facility. The Applicants believe this course of action represents the best available option in the circumstances to maximize value and preserve the

possibility of their Canadian business continuing in some fashion for the benefit of stakeholders.

### **Appointment of A&M as Monitor**

12. A&M has consented to act as the Court-appointed Monitor of the Applicants, subject to Court approval.

13. A&M is a trustee within the meaning of section 2 of the BIA and is not subject to any of the restrictions on who may be appointed as Monitor as set out in subsection 11.7(2) of the CCAA.

14. A&M has acquired significant knowledge of the Company and its restructuring efforts to date, is the proposal trustee under the NOI, and has extensive experience assisting in implementing transactions and wind-down processes in the context of the CCAA, and is therefore well-suited to this mandate.

### **Stay of Proceedings**

15. The current NOI stay expires on January 30, 2024. In light of their financial circumstances, pending and threatened litigation and the possibility of creditors and contractual counterparties taking adverse action, the Applicants require a continuing stay of proceedings in order to preserve the status quo and provide breathing space while the Applicants work to complete and implement turn-key transactions and an orderly liquidation of the Pickering facility in an effort to maximize value and deliver other potential benefits to their stakeholders.



### **DIP Loan and DIP Charge**

16. The Applicants currently have approximately \$2 million of cash on hand. Depending on outstanding accounts receivable collections and the timing of the receipt of initial liquidation proceeds from the Pickering facility, it is possible they may be able to finance these proceedings and ongoing expenses pending closing of transactions from their own assets. However, the quantum, timing and collectability of these receipts is uncertain at present and it is possible that incremental financing may be required by the Applicants to operate during the 13-week period following commencement of these CCAA proceedings.

17. The Applicants have negotiated a back-stop DIP Term Sheet with the DIP Lender which contemplates a DIP Loan in a maximum principal amount of \$1,200,000, to be secured by a super-priority DIP Lender's Charge. The DIP Loan remains subject to credit committee approval of the DIP Lender, which is expected to be sought in advance of the hearing for the Initial Order.

18. The DIP Loan will ensure that the Applicants have sufficient liquidity to pursue the transactions for the Delta and Toronto facilities, as well as the Pickering facility liquidation. No creditor will be materially prejudiced by the granting of the DIP Lender's Charge.

### **Administration Charge and Directors' Charge**

19. The Applicants are seeking the Court's approval of an Administration Charge and a Directors' Charge as part of the proposed Initial Order in order to secure, respectively, the professional services required to advance these CCAA proceedings and ensure the continued assistance and oversight of the Applicants' directors and officers.

20. The Applicants require the continuing commitment of the professionals who will benefit from the Administration Charge as well as their directors and officers in order to pursue their restructuring efforts and the proposed quantum of the charges is appropriate.

#### **KERP**

21. Following the Recall, a number of the Company's employees resigned, which created ongoing challenges for the Company. To address this, in early December 2024, the Company, with the consent of the Senior Lenders, implemented a key employee retention program designed to incentivize certain employees who were critical to the ongoing operations of business to remain with the Company (the "**Pre-Filing KERP**").

22. The Applicants' remaining senior management were not participants under the Pre-Filing KERP. Given recent departures and the expanded role undertaken by these individuals, it is critical that the Applicants retain their remaining senior management in order to pursue the turn-key transactions for the benefit of stakeholders. Accordingly, the Applicants are seeking authorization to establish a KERP for senior management structured in a manner consistent with the Pre-Filing KERP, as well as a priority charge to secure the obligations that could become payable thereunder as well as the Pre-Filing KERP.

#### **WEPP Declaration**

23. Joriki Canada has terminated the employment of all of its employees in Canada other than those retained to wind down its business operations. As such, the Applicants are seeking an order that the Applicants meet the criteria established by WEPP in order to enable their

former employees to timely access any benefits to which they may be entitled to under WEPP.

### **Pickering Liquidation**

24. No offers were received for the Pickering facility in the Sale Process and the go-forward viability of this site has been impacted by the Recall and the loss of key customers. Subject to Court approval, the Applicants expect to pursue a liquidation of the Pickering facility and have entered into the Pickering Auction and Liquidation Services Agreement with an experienced liquidator.

25. The liquidation of Pickering is supported by the proposed Monitor and will allow the Applicants to realize value from their assets there for the benefit of creditors and facilitate a timely exit from the Pickering facility to reduce ongoing expenses.

### **General**

26. The Applicants meet the statutory requirements to be eligible for protection under the CCAA.

27. The Applicants are insolvent.

28. The claims against the Applicants exceed CA\$5 million.

29. The Applicants require the protection of this Court in order to allow them to pursue turn-key transactions for their assets at the Delta and Toronto facilities as well as the liquidation of the Pickering facility for the benefit of their stakeholders.

30. The proposed Monitor and the Senior Lenders support the relief sought on the application, and no creditor will be materially prejudiced by the relief sought.

31. Notice of the application has been given to the Applicants' secured creditors.

32. The circumstances that exist make the Initial Order sought by the Applicants appropriate.

33. The provisions of the CCAA, including sections 11, 11.02, 11.03, 11.2, 11.51, 11.52, 11.6 and 11.7, and this Court's equitable and statutory jurisdiction thereunder.

34. Rules 1.04, 1.05, 2.03, 3.02, 14.05(2), 16 and 38 of the Ontario *Rules of Civil Procedure*, R.S.O. 1990, Reg. 194, as amended.

35. Such other grounds as set out in the Devon Affidavit.

36. Such further and other grounds as counsel may advise and this Court may permit.

37. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Application:

- (a) the Devon Affidavit and the exhibits attached thereto;
- (b) the consent of A&M to act as Monitor dated January 22, 2025;
- (c) the Pre-Filing Report of the Monitor, to be filed; and
- (d) such further and other materials as counsel may advise and this Court may permit.

Date: January 23, 2025

**GOODMANS LLP**

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Lawyers for the Applicants

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.

Court File No.

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Applicants

	<b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> <b>(COMMERCIAL LIST)</b> Proceeding commenced at Toronto
	<b>NOTICE OF APPLICATION</b> (Returnable January 23, 2025)
	<b>GOODMANS LLP</b> Barristers & Solicitors 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7  <b>Robert J. Chadwick</b> LSO# 35165K rchadwick@goodmans.ca  <b>Christopher Armstrong</b> LSO# 55148B carmstrong@goodmans.ca  <b>Erik Axell</b> LSO# 853450 eaxell@goodmans.ca  Tel: (416) 979-2211 Fax: (416) 979-1234  Lawyers for the Applicants

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**AFFIDAVIT OF MICHAEL G. DEVON**  
(sworn January 22, 2025)

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Applicants

**AFFIDAVIT OF MICHAEL G. DEVON**  
(sworn January 22, 2025)

I, Michael G. Devon, of the City of North York, in the Province of Ontario, MAKE OATH  
AND SAY:

**I. INTRODUCTION**

1. I am the Chief Financial Officer (“**CFO**”) of Joriki TopCo Inc. (“**Joriki TopCo**”) and its wholly-owned Canadian operating subsidiary, Joriki Inc. (“**Joriki Canada**”). I was also previously the CFO of Joriki USA Inc. (“**Joriki USA**”, and, collectively with Joriki TopCo and Joriki Canada, “**Joriki**” or the “**Company**”), the Company’s U.S. operating subsidiary. For clarity, Joriki USA is not an Applicant in these proceedings.<sup>1</sup>

2. My consulting company was engaged by Joriki in June 2024, to assist the Company with its finance functions and I subsequently commenced the CFO role on December 2, 2024, following the planned transition of the Company’s prior CFO. I am responsible for overseeing the

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<sup>1</sup> Capitalized terms used in this Introduction and not otherwise defined are defined later in my Affidavit.

Company's finances and have been involved in considering and assessing its business challenges and restructuring options over the past six months. As such, I have knowledge of the matters hereinafter deposed to, except where stated to be on information and belief and whereso stated I verily believe it to be true. I do not, and do not intend to, waive privilege by any statement herein.

3. This affidavit is made in support of an application by the Applicants for an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"). Unless otherwise indicated, all monetary references in this affidavit are to Canadian dollars.

4. Until very recently, Joriki manufactured and packaged consumer beverages, including juices and plant-based beverages for several large consumer packaged goods companies, and to a lesser extent, grocery retailers and independent brands. Joriki operated its business from three production facilities in Canada (the Toronto and Pickering facilities in Ontario, and the Delta facility in B.C.), and one in the United States (the Pittston facility in Pennsylvania).

5. Founded in 1991, Joriki historically operated a profitable business focused on its GTA operations, before expanding to British Columbia in 2010. Over the past several years, aided by investments from its controlling shareholder and secured debt financing, the Company sought to grow its operations, including expanding capabilities at its existing facilities and, in 2022, commencing the build-out of a new U.S. production facility in Pittston, Pennsylvania.

6. While the Company was very successful in growing its top line revenue, that growth, coupled with ongoing interest expense and various operational challenges, led to the Company suffering a net loss (albeit a relatively small one) in 2022. The Company's losses expanded significantly in 2023 as a result of a delay in the completion and commissioning of the Pittston facility and, thereafter, challenges reaching expected operational capacity and efficiencies there.

7. In response, the Company developed a comprehensive improvement plan for Pittston and, in early 2024, obtained additional financing from its controlling shareholder to fund necessary capital expenditures and negotiated covenant relief and other concessions from its lenders. Unfortunately, in light of subsequent events described below, the Company was unable to implement this plan, with the result that Pittston continued to experience ongoing operating losses, and the Company is now burdened by additional debt.

8. Amidst the turnaround efforts at Pittston, in July 2024 the Pickering facility was implicated in a Canada-wide recall of Silk® and Great Value® plant-based beverages as a result of a *Listeria monocytogenes* outbreak (the “**Recall**”). The Recall had a severe negative impact on the Company’s Canadian business, leading to a shut-down of the Pickering facility (which in FY2024 was Joriki’s largest production site by case volume), production pauses at other facilities, the loss of key customers, significantly reduced revenues, additional costs addressing the Recall and a related regulatory investigation, a class action lawsuit and the threat of additional litigation.

9. The Company worked to respond to the Recall and address the resulting impacts on its business, including securing incremental financing from, among others, The Bank of Nova Scotia and The Toronto Dominion Bank (the “**Senior Lenders**”) and, with the assistance of its professional advisors, undertaking a strategic review of its operations, including conducting a sale process (the “**Sale Process**”) to explore the possibility of a sale of some or all of its business.

10. While the Sale Process generated strong interest in various potential transactions, the Company’s operating losses continued to mount. Following the loss of a key customer and certain potential purchasers advising the Company in late December 2024 they would not be pursuing transactions, the Senior Lenders advised they were no longer prepared to fund the business as a going concern.

11. Accordingly, the Company ceased active business operations and, on December 31, 2024, terminated the employment of substantially all its employees save for a small group to assist in wind-down activities. Prior to doing this, Joriki Canada filed a Notice of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act* (Canada) (the “**NOI**”) and Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed as proposal trustee. On January 12, 2025, Joriki USA filed a petition under Chapter 7 of the United States Bankruptcy Code before the United States Bankruptcy Court for the District of Delaware and Alfred T. Giuliano was appointed as Chapter 7 trustee of Joriki USA (the “**Chapter 7 Trustee**”).

12. Notwithstanding the cessation of active business operations, the Applicants, in consultation with their professional advisors, A&M and the Senior Lenders, continue to believe that one or more value maximizing “turn-key” transactions can still be completed in respect of the Toronto and Delta facilities, including the possibility of transactions that would preserve customer and supplier relationships and could include the possibility of some of Joriki Canada’s remaining and former employees being offered employment by a purchaser. To this end, Joriki Canada has recently entered into a letter of intent (“**LOI**”) with a prospective purchaser of its assets at the Delta facility and is in negotiations in respect of a transaction for the Toronto facility.

13. In light of the foregoing, the Applicants, with the support of the Senior Lenders, have commenced these proceedings in order to maintain the status quo while they pursue transactions for the Toronto and Delta facilities on an expedited timeframe, as well as a liquidation of the Pickering facility. The Applicants believe this course of action represents the best available option in the circumstances to maximize value and preserve the possibility of their Canadian business continuing in some fashion for the benefit of stakeholders.

## II. EVENTS LEADING TO THE CCAA FILING

### A. Pittston Challenges

14. Founded over 30 years ago, Joriki is a Canadian-headquartered contract manufacturer of beverages for some of the world's largest consumer brands.

15. Historically, the Company operated from its three Canadian production facilities and predominantly serviced the Canadian beverage contract packaging market. In 2019, the Company received an investment from a new controlling shareholder and began pursuing a strategy to accelerate growth with additional technical capabilities, customers and expansion of both its existing facilities and into the United States. While this strategy led to a significant increase in the Company's top-line revenue, it struggled to generate a profit in recent years, primarily driven by ongoing operating losses at its new production facility in Pittston.

16. As part of its growth strategy, in calendar year 2022, the Company began a build-out of a 403,000 sq.ft. seven-line beverage production facility in Pittston, Pennsylvania to service a major long-term contract with an anchor customer for the site in addition to two other customers who were subsequently onboarded. In addition to financing provided by its controlling shareholder, Joriki obtained approximately \$150 million of additional financing from the Senior Lenders and Roynat Capital Inc. ("**Roynat**") to fund the start-up costs related to Pittston.

17. Joriki incurred significant delays and cost overruns on construction and commissioning of the Pittston site relative to initial projections. Further, the Company was unable to effectively scale production capacity at Pittston as a result of operational challenges. Pittston had only five operational production lines (of seven contemplated) which suffered from frequent unplanned downtime. As a result, the Company incurred significant operational losses at Pittston.

18. Notwithstanding these issues, Pittston had significant long-term potential (a plant in a strategically situated location, a number of long-term quality customer contracts and significant growth potential). As such, the Company devoted significant effort to address the challenges at Pittston and improve operations, including via further capital improvements and engaging a third-party operations consultant to assist in optimizing operations, with a goal of achieving full operational capacity on the five lines currently installed during calendar year 2025.

19. To facilitate these efforts, in early 2024 Joriki obtained additional financing from its controlling shareholder and various concessions from the Senior Lenders and Roynat with respect to financial covenants and interest payments under the Senior Credit Agreement and Subordinate Credit Agreement (each as defined below). With the resulting incremental capital and flexibility, in the spring of 2024, the Company, with the assistance of an operations consultant, began to implement a turnaround plan for Pittston. Unfortunately, implementation of this plan was derailed by the organizational and financial strain of the Recall, as discussed below.

## **B. The Recall and its Impact**

20. On July 5, 2024, Joriki Canada was advised by the Canada Food Inspection Agency (“CFIA”) that it was investigating a Listeriosis outbreak in Ontario in collaboration with its federal and provincial regulatory partners. CFIA disclosed that there were nine confirmed Listeriosis cases, of which six reported consumption of Danone Inc.’s (“**Danone**”) Silk<sup>®</sup> product, with a date code that indicated it was produced at the Pickering facility. The CFIA required that Joriki Canada continue operating the relevant production line that produced this product until July 6, 2024, after which, the CFIA allowed Joriki Canada to shut it down.

21. On July 8, 2024, a food recall warning was issued for various Silk<sup>®</sup> and Great Value<sup>®</sup> brand plant-based refrigerated beverages due to possible *Listeria monocytogenes* contamination, *i.e.* the Recall. A copy of the Recall notice is attached hereto as Exhibit “A”.

22. As a result of the information provided to it by the CFIA, the Company commenced a comprehensive investigation and review of its production protocols and operations in cooperation with CFIA and its customers. No determination has been made by the Company of the source of the *Listeria monocytogenes* or its liability, if any, in connection with the Recall.

23. The Public Health Agency of Canada (“PHAC”) has reported that 20 laboratory-confirmed cases of *Listeria monocytogenes* illness were linked to this outbreak with 15 people hospitalized and three deaths. PHAC’s investigation findings issued on October 11, 2024, identified Silk<sup>®</sup> and Great Value<sup>®</sup> plant-based refrigerated beverages as the likely source of the outbreak. A copy of PHAC’s October 11, 2024, “Public Health Notice: Outbreak of *Listeria* infections linked to recalled plant-based refrigerated beverages” is attached hereto as Exhibit “B”. On October 29, 2024, CFIA announced that it had concluded its investigation and confirmed that it was not able to confirm the primary source of the contamination within the Pickering facility. A copy of CFIA’s “Statement on the conclusion of the food safety investigation related to the recall of various Silk and Great Value brand plant-based refrigerated beverages” dated October 29, 2024, is attached hereto as Exhibit “C”.

24. On August 7, 2024, the CFIA released a public statement identifying Joriki Canada (and the Pickering facility in particular) as the third party manufacturer of the products implicated in the Recall. Certain customers subsequently suspended production at Pickering, and the facility was idled. Although Delta was not implicated in the Recall, various customers also paused production at that facility.



25. As a result of these production shutdowns and suspensions, the Company's run-rate production volumes in Canada fell by over half, resulting in significant negative net operating cash flow in Canada and associated liquidity constraints (previously Canadian operations had been a positive operating cash flow contributor to the business). The resulting losses were funded by additional shareholder loans and by obtaining short term funding from the Senior Lenders and a key customer. Notwithstanding the Company's efforts to obtain additional financing to support the business and sustain liquidity, amounts owing to many trade creditors became significantly past due.

26. Joriki Canada has been named as a defendant in a Quebec class action relating to the Recall, a copy of which is attached as Exhibit "D". A second class action relating to the Recall has been commenced in British Columbia, although to the best of my knowledge Joriki Canada has not been named as a defendant in that proceeding. Danone also delivered a letter providing notice of claims and potential claims against Joriki Canada, and to demand compensation and indemnity with respect to Danone's alleged damages, a copy of which is attached as Exhibit "E".

27. While the Recall had no direct impact on Pittston, management was required to divert its attention from the operational improvement plan there to supporting the Company's investigation and response to the Recall and, in light of its financial circumstances, the Company was unable to make many of the planned capital improvements at Pittston. As a result, Pittston's challenges continued, and its losses continued to mount. These losses were in part funded by weekly cash payments from a key customer, which payments concluded in late December 2024.

28. The impact of the Recall also led to defaults under the Senior Credit Agreement and the Subordinate Credit Agreement. The Company does not have the ability to repay the significant secured debt obligations outstanding thereunder, which total in excess of \$209 million at present.

Given the amounts owing to the Senior Lenders relative to expected proceeds from realizations on the Applicants' assets, it is not expected that any value will be available for others creditors.

**C. Restructuring Efforts**

29. In light of the mounting issues facing the Company, in August 2024 it engaged Goodmans LLP ("**Goodmans**"), as legal counsel, and A&M, the proposal trustee under the NOI and the proposed monitor in these proceedings (the "**Monitor**"), to assist in reviewing and assessing its strategic options and alternatives, in consultation with the Senior Lenders and their advisors.

30. Following this review, the Company, with the assistance and under the oversight of A&M, undertook the Sale Process to solicit interest in one or more sales or other value maximizing transactions in respect of the Company's business and assets.

31. The Sale Process identified a number of potential transactions for the Company's Canadian business, as well as a potential transaction for its U.S. business. Unfortunately, in late December 2024 certain potential purchasers advised they would not be pursuing transactions. In light of this development, the Senior Lenders advised they were no longer prepared to fund the Company's business as a going concern, with the result that the Company determined to cease operations and, in the case of Joriki Canada, to file the NOI. As noted previously, Joriki USA subsequently filed for Chapter 7 bankruptcy in the United States.

32. Notwithstanding that the Company has ceased active business operations, the Applicants still believe that turn-key transactions are possible for the Toronto and Delta facilities that would both maximize value and potentially preserve customer and supplier relationships and result in a purchaser offering employment to some of its current and former employees. As noted previously, the Company has recently entered into an LOI in respect of its assets at the Delta facility and is in

the process of negotiating definitive transaction documentation. It is also advancing a potential transaction for its assets at the Toronto facility. Accordingly, with the support of the Senior Lenders, the Applicants have commenced these CCAA proceedings to pursue these transactions on an expedited basis, as well as a liquidation of the Pickering facility.

33. Following filing of the NOI, the Applicants, with the assistance of A&M as proposal trustee, have worked to maximize collection of their outstanding accounts receivable, including by working to distribute finished goods and negotiating related accommodations with their customers. The Applicants currently have approximately \$2 million of cash on hand. Depending on outstanding accounts receivable collections and the timing of the receipt of initial liquidation proceeds from Pickering, it is possible they may be able to finance these proceedings and ongoing expenses pending closing of transactions from their own assets. However, in order to ensure they will have sufficient liquidity to do so, the Applicants also have been negotiating a back-stop debtor-in-possession (“**DIP**”) financing facility (the “**DIP Loan**”) with the Senior Lenders (in such capacity, collectively, the “**DIP Lender**”). The DIP Loan is discussed in greater detail below. The DIP Loan remains subject to credit committee approval of the DIP Lender, which is expected to be sought in advance of the hearing for the Initial Order. The Applicants or the proposed Monitor will update the Court on the status of the DIP Loan in advance of the hearing for the Initial Order.

34. Accordingly, the Applicants seek an Initial Order, providing for, among other relief: (a) a continuation of the NOI proceedings into these CCAA proceedings; (b) a stay of proceedings for an initial 30-day period (the “**Initial Stay Period**”); (c) authorization to enter into the DIP Term Sheet (as defined below) and borrow under the DIP Loan (if agreed to) in the maximum principal amount of \$1,200,000; (d) the granting of the following priority charges (collectively, the “**Charges**”) over the Applicants’ Property (as defined in the Initial Order), listed in order of

priority: (i) the Administration Charge (as defined below) up to a maximum amount of \$700,000; (ii) the Directors' Charge (as defined below) up to a maximum amount of \$200,000; (iii) the KERP Charge (as defined below) up to a maximum amount of \$487,500 (plus interest, fees and expenses); and (iv) the DIP Lender's Charge (as defined below) up to a maximum amount of \$1,200,000 (plus interest, fees and expenses).

35. The CCAA proceedings and the relief outlined herein are in the best interests of the Applicants and their stakeholders and, in light of the Applicants' liquidity position and inability to repay their secured debt, represent the best means of pursuing value maximizing transactions for the benefit of stakeholders.

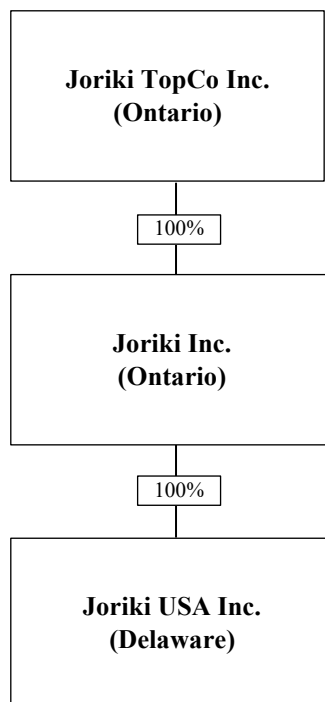
### **III. BACKGROUND REGARDING THE COMPANY AND THE BUSINESS OF THE APPLICANTS**

#### **A. Corporate Structure**

##### *(i) Overview*

36. An organizational chart outlining the Company's corporate structure is set forth below.

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*(ii) Joriki TopCo Inc.*

37. Joriki TopCo, the privately held parent company of the Applicants, is incorporated under the laws of Ontario with a registered head office located at 3431 McNicoll Avenue, Scarborough, Ontario (*i.e.* the Toronto facility, which also functions as the Company's headquarters). Joriki TopCo is a holding company, and its main asset is its 100% ownership interest in Joriki Canada.

38. As discussed further below, Joriki TopCo is a guarantor of Joriki Canada's obligations under the Senior Credit Agreement and the Subordinate Credit Agreement, and has granted security interests in the equity interests it holds in Joriki Canada to secure those obligations. Joriki TopCo is also the issuer of the Promissory Grid Notes (as defined below).

*(iii) Joriki Inc.*

39. Joriki Canada is a company incorporated under the laws of Ontario with its registered head office at the Toronto facility. Joriki Canada operated the Company's business in Canada, including

each of the Toronto, Pickering and Delta facilities. Joriki Canada is also the direct parent of Joriki USA.

40. As discussed further below, Joriki Canada is the borrower under the Senior Credit Agreement, the Subordinate Credit Agreement and the Intercompany Loan (as defined and discussed below), and has granted security interests in substantially all of its property to secure those obligations.

*(iv) Joriki USA Inc.*

41. Joriki USA is a company incorporated under the laws of Delaware and was the operating entity of the Company's business in the United States.

42. As noted previously, on January 12, 2025, Joriki USA filed a petition under Chapter 7 of the United States Bankruptcy Code. I understand the Chapter 7 Trustee will advance realization efforts in respect of Joriki USA's assets for the benefit of its creditors.

**B. The Business**

*(i) Overview*

43. As referenced above, the Company is a Canadian headquartered contract manufacturer of beverages that offered production and packaging services for some of the world's largest consumer packaged goods companies, grocery retailers and independent brands. The Company provided end-to-end solutions to these customers, including: (i) bottle blow molding; (ii) recipe development support; (iii) plant trials; (iv) manufacturing; (v) quality inspection; and (vi) warehousing and shipping.

44. The production facilities are equipped with technology for blending, filling and packaging and the Company's core service capabilities included: (i) aseptic carton; (ii) aseptic bottle; (iii)

single and multi-serve hot-fill; and (iv) single and multi-serve chilled beverages. The facilities' production lines enabled the Company to run various flavours, configurations, pack sizes and formats, with flexible batching and blending systems for juices, electrolyte incorporation and plant-based proteins.

(ii) *Customers*

45. Joriki's contractual commitments with its customers are generally multi-year and are segmented into two categories:

- (a) **Turnkey** - where the Company orders and purchases raw materials from certain customers' preferred vendors and passes through those costs (subject to certain periodic cost-price adjustments) to those customers, plus the Company's applicable fees or mark-up based on cases produced; and
- (b) **Tolling** - where the Company charges fixed fees per case produced based on its services, allocable overhead costs and certain packaging and other costs incurred directly, but does not incur most raw material costs.

46. The contractual arrangements with the Company's customers specify what facility is to produce the products and how they are to be produced. As a result, production lines are configured to customers specific requirements and are not easily interchangeable.

47. The Company has a very high customer concentration. During FY24, three customers accounted for approximately 75% of case volume in Canada.

48. Many of the Company's customers are also highly dependent on Joriki and will have challenges replacing Joriki as a supplier in the near term. Accordingly, the Applicants believe that

pursuing turn-key transactions that would see a purchaser continue operating certain of its Canadian facilities could provide benefits to some of Joriki's Canadian customers.

*(iii) Headquarters and Canadian Production Facilities*

49. The Company serviced its customers from its four production facilities and managed the business from its corporate headquarters located at the Toronto facility.

**(a) Toronto Facility**

50. The Toronto facility is located in Scarborough, Ontario. It has five production lines in an approximately 65,000 square foot leased facility and a production capacity of approximately 219,000 cases per week. The production run-rate in FY24 was approximately 174,000 cases per week (79% of capacity) and the plant generated significant positive EBITDA for the Company. On November 15, 2024, the Company was given notice by its largest customer at Toronto (who represented approximately 40% of the case volume produced at this site) that they were terminating their contract effective January 2025.

**(b) Pickering Facility**

51. The Pickering facility is located at 885 Sandy Beach Road, Pickering, Ontario. It has five production lines in an approximately 118,000 square foot leased facility and a production capacity of approximately 302,000 cases per week. The production run-rate in FY24 was approximately 225,000 cases per week (75% of capacity) and the plant generated positive EBITDA for the Company prior to the Recall.

52. As discussed previously, the Pickering facility was idled following the Recall. The Pickering facility's two largest customers subsequently advised they had no plans to place any further orders for fulfillment from the Pickering facility and began the process of transitioning to



an alternative supplier. As no expressions of interest were received for Pickering in the Sale Process, the Applicants expect to proceed with an orderly liquidation of their assets there.

(c) **Delta Facility**

53. The Delta facility is located at 695 Derwent Way, Delta, BC. It has three production lines in an approximately 54,000 square foot leased facility and a production capacity of approximately 114,000 cases per week. The production run-rate in FY24 was approximately 63,000 cases per week (55% of capacity) and the plant generated negative EBITDA.

(d) **Regulatory Licenses**

54. Each Canadian production facility is required to have a Safe Food for Canadians License (“**SFC License**”) under the *Safe Food For Canadians Regulations* (the “**SFCR**”) in order to operate. The CFIA oversees and ensures that production facilities, such as the Company’s, are operating in accordance with the SFCR.

55. As a result of the Recall and resulting inspections by CFIA at Pickering, on August 22, 2024, CFIA issued a written report of non-compliance to Joriki Canada under the SFCR, including outlining various corrective actions required to be taken to avoid a suspension of the Pickering SFC License. Further, on September 9, 2024, a CFIA inspector ordered that all persons employed by Joriki Canada were limited from access to anything at the Pickering facility to prevent product trial and product manufacturing with the intent of distributing. In light of the cessation of operations and the decision to liquidate Pickering, on December 31, 2024, Joriki Canada voluntarily surrendered the Pickering SFC License to the CFIA.

56. The SFC Licenses for the Toronto and Delta facilities remain in good standing and, to the knowledge of the Company, there is no pending regulatory action by CFIA in relation to those facilities.

*(iv) Employees*

57. As of December 30, 2024, the Company had approximately 565 full-time and temporary employees, approximately 337 of whom were employed by Joriki Canada.

58. As discussed previously, on December 31, 2024, the Company terminated the employment of substantially all of its employees save for certain employees retained to wind-down the Company's operations. Joriki Canada provided notice of group terminations to the Ontario Director of Employment Standards (Ministry of Labour, Immigration, Training and Skill Development) and to the B.C. Minister of Labour.

59. None of Joriki Canada's employees were unionized and the Applicants do not have any registered pension plans.

60. Joriki Canada is current on its payroll obligations, including all source deductions, and all accrued and outstanding vacation pay owing to its employees has been paid.

61. In light of the filing of the NOI and Joriki Canada's financial position, it is unable to make payment of any termination and/or severance pay that is owing to its former employees. As described in greater detail below, the Applicants are seeking a WEPP (as defined below) declaration as part of the relief sought on the Initial Order.

#### IV. FINANCIAL POSITION

##### A. Financial Statements

62. The fiscal year end of the Company is June 30. Copies of the Company’s consolidated audited financial statements for the year ended June 30, 2023 (the “**2023 Financials**”), and unaudited internal financial statements for Joriki Canada for the year ended June 30, 2024 (the “**2024 Financials**”) are attached hereto as Exhibits “F” and “G”, respectively. Audited financial statements for 2024 were not completed owing to the financial position of the Company. A copy of Joriki Canada’s most recent unaudited financial statements for the period ending December 31, 2024, are attached as Exhibit “H”.

63. As at December 31, 2024, Joriki Canada’s assets had an unaudited book value of approximately \$287 million, and its liabilities had an unaudited book value of approximately \$261 million. Joriki Canada’s assets include approximately \$215 million due from Joriki USA (reflecting Joriki Canada’s investment in Joriki USA), which the Applicants expect no recovery on in light of Joriki USA’s bankruptcy.

##### B. Funded Debt Obligations

###### (i) Overview

64. Joriki Canada is party to two secured credit agreements, as well as a secured intercompany loan from Joriki TopCo, which are summarized in the following table and described in greater detail in the paragraphs that follow:

Debt Obligation	Amount Outstanding as at Dec. 31, 2024 (approximately)	Maturity	Borrower(s)	Guarantor(s)	Secured
Senior Credit Agreement	\$192,100,408	September 20, 2026	Joriki Canada	Joriki USA Joriki TopCo	Yes

Debt Obligation	Amount Outstanding as at Dec. 31, 2024 (approximately)	Maturity	Borrower(s)	Guarantor(s)	Secured
Subordinate Credit Agreement	\$17,341,510	December 15, 2026	Joriki Canada	Joriki USA Joriki TopCo	Yes
Intercompany Loan	\$40,000,000 (plus accrued interest)	June 30, 2027	Joriki Canada	No	Yes
TopCo Promissory Grid Notes	\$40,000,000 (plus accrued interest)	June 30, 2027	Joriki TopCo	N/A	No

(ii) *Senior Credit Agreement*

65. Joriki Canada, as borrower, Joriki USA and Joriki TopCo, as guarantors, Bank of Nova Scotia, as administrative agent (the “**Senior Agent**”), and the Senior Lenders, entered into a fourth amended and restated credit agreement dated March 11, 2024, as amended by (i) a first amendment to the fourth amended and restated credit agreement dated as of September 23, 2024, (ii) a second amendment to the fourth amended and restated credit agreement dated as of November 12, 2024, (iii) a third amendment to the fourth amended and restated credit agreement dated November 18, 2024, and (iv) a fourth amendment to the fourth amended and restated credit agreement dated December 4, 2024 (collectively, the “**Senior Credit Agreement**”). The Senior Credit Agreement amended and restated an earlier credit agreement with the Senior Lenders originally dating back to 2019. A copy of the current amended Senior Credit Agreement (excluding exhibits and schedules) is attached as Exhibit “I”.<sup>2</sup>

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<sup>2</sup> The names of the Company’s customers have been redacted in the Senior Credit Agreement and the Subordinate Credit Agreement to preserve customer confidentiality.

66. Pursuant to the Senior Credit Agreement, the Senior Lenders made available to Joriki Canada: (i) various secured revolving credit facilities of up to \$47 million; (ii) a secured non-revolving term loan facility in the aggregate principal amount of \$18 million; and (iii) a non-revolving term loan facility in the aggregate principal amount of US\$78,091,942 (collectively, the “**Senior Secured Facilities**” and each a “**Senior Secured Facility**”).

67. Amounts outstanding under the Senior Secured Facilities bear interest at the applicable interest rate plus an applicable margin depending on the type of borrowing and Total Debt to EBITDA Ratio (as defined in the Senior Credit Agreement) of Joriki Canada at the time of the borrowing. The Senior Secured Facilities mature on September 20, 2026. As at December 31, 2024, there was approximately \$192 million owing under the Senior Secured Facilities. There is no remaining availability under the Senior Secured Facilities.

68. As previously indicated, Joriki Canada is in default under the Senior Credit Agreement. Among other defaults, the Recall and its effects constitute a “Material Adverse Effect” under the Senior Credit Agreement, and the Company has also been unable to deliver audited financial statements for FY24 to the Agent in accordance with the Senior Credit Agreement. Notwithstanding these defaults, over the past several months the Senior Lenders extended additional credit to the Company in order to assist in addressing its liquidity needs while it assessed its strategic options; however, given the circumstances, the Senior Lenders have advised they are not prepared to advance any further funding without the benefit of a priority charge.

69. The Secured Facilities are secured by a security interest in substantially all of the assets and property of Joriki Canada (amongst other collateral). Attached as:

- (a) Exhibit “J” is a copy of the *Personal Property Security Act* (Ontario) (“**ON PPSA**”) registrations against Joriki Canada as at January 17, 2025. The ON PPSA searches show that the Senior Agent has a first in time registration against Joriki Canada in respect of all classes of collateral excluding consumer goods<sup>3</sup>;
- (b) Exhibit “K” is a copy of the *Personal Property Security Act* (B.C.) (“**BC PPSA**”) registrations against Joriki Canada as at January 17, 2025. The BC PPSA searches show that the Senior Agent has a first in time registration against Joriki Canada in respect of all present and after acquired personal property of Joriki Canada; and
- (c) Exhibit “L” is a copy of the ON PPSA registrations against Joriki TopCo as at January 17, 2025. The ON PPSA searches show that the Senior Agent has a first in time registration against Joriki TopCo in respect of “Accounts” and “Other”.

70. The ON PPSA and BC PPSA registrations against Joriki Canada also reflect certain registrations relating to the lease of equipment (such as forklifts) that the Company utilized in its day to day operations.

(iii) *Subordinate Credit Agreement*

71. Joriki Canada, as borrower, Joriki USA and Joriki TopCo, as guarantors, and Roynat, as administrative agent and lender, entered into an amended and restated credit agreement dated March 11, 2024 (the “**Subordinate Credit Agreement**”) pursuant to which Roynat made available to Joriki Canada a non-revolving loan in the aggregate principal amount of \$15 million (the “**Roynat Term Loan**”). The Subordinate Credit Agreement amended and restated an earlier credit

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<sup>3</sup> The Investor Agent (as defined below) has an earlier in time registration relating to purchased receivables under the Receivables Purchase Agreement (as defined below).

agreement with Roynat originally entered into in 2023. A copy of the Subordinate Credit Agreement (excluding exhibits and scheduled) is attached as Exhibit “M”.

72. The Roynat Term Loan bears interest at 14%, payable monthly in cash or payment in kind interest (up to a maximum of 5% of the interest rate). The Roynat Term Loan matures on December 15, 2026.

73. As at December 31, 2024, the amount outstanding under the Roynat Term Loan was approximately \$17.3 million. The Roynat Term Loan is secured by a security interest in substantially all of the assets and property of Joriki Canada (amongst other collateral). The ON PPSA and BC PPSA searches referenced above show that Roynat has security registrations against each of Joriki Canada and Joriki TopCo.

*(iv) TopCo Promissory Grid Notes and Intercompany Loan*

74. In connection with the early 2024 refinancing undertaken by the Company, the controlling shareholder agreed to loan \$40 million to fund the Company’s ongoing operations, and in particular the Pittston operational turnaround efforts. These loans were funded over the course of 2024, with the final advance being made in September 2024. The loans are evidenced by three promissory grid notes issued by Joriki TopCo to the controlling shareholder dated January 19, 2024 (the “**TopCo Promissory Grid Notes**”). The TopCo Promissory Grid Notes are unsecured, bear interest at 20% and mature on June 30, 2027.

75. The \$40 million advanced under the TopCo Promissory Grid Notes was subsequently on-lent by Joriki TopCo to Joriki Canada (the “**Intercompany Loan**”) as reflected in a promissory grid note issued by Joriki Canada to Joriki TopCo dated January 19, 2024. The Intercompany Loan bears interest at 20.05% and matures on June 30, 2027. As security for the Intercompany Loan,

Joriki Canada granted Joriki TopCo a security interest in substantially all of the assets and property of Joriki Canada. The ON PPSA and BC PPSA searches referenced above show that Joriki TopCo has security registrations against Joriki Canada.

76. On March 11, 2024, Joriki TopCo entered into subordination agreements with each of the Senior Agent and Roynat, pursuant to which Joriki TopCo agreed that payment of the Intercompany Loan is subordinated in right of payment to the prior payment in full of the obligations under the Senior Credit Agreement and Subordinate Credit Agreement.

*(v) Intercreditor Agreement*

77. The Senior Agent, Roynat, Joriki Canada, Joriki TopCo and Joriki USA are parties to an Intercreditor Agreement dated September 8, 2023 (the “**Intercreditor Agreement**”). Among other things, the Intercreditor Agreement provides that the payment and performance of the obligations owing to Roynat under the Subordinate Credit Agreement and the related security are deferred, postponed and subordinate in all respects to the prior final and irrevocable payment in full in cash of the obligations owing to the Senior Lenders under the Senior Credit Agreement. A copy of the Intercreditor Agreement is attached as Exhibit “N”.

**C. Receivables Purchase Agreement**

78. Joriki Canada is a party to a receivables purchase agreement with JPMorgan Chase, N.A., as agent for certain investors (the “**Investor Agent**”) dated September November 2, 2015 (the “**Receivables Purchase Agreement**”). Pursuant to the Receivables Purchase Agreement, Joriki Canada automatically offers to sell its receivables from a specified large customer (the “**Designated Receivables**”) to the Investor Agent. If the Investor Agent accepts the applicable offer, it pays Joriki Canada a purchase price for the Designated Receivables pursuant to a



calculation outlined in the Receivables Purchase Agreement and Joriki Canada sells the Designated Receivables to the Investor Agent. The customer subsequently pays the purchased Designated Receivables directly to the Investor Agent. In light of the cessation of Joriki Canada's operations, it is no longer generating Designated Receivables.

#### **D. Trade Creditors**

79. Joriki Canada purchased goods and services in the normal course of business to facilitate the manufacturing of its products and the administration of the Company. Given liquidity constraints following the Recall, Joriki Canada was paying many vendors significantly in excess of usual payment terms and was unable to make payment of certain outstanding trade vendor invoices. Amounts owed to trade creditors by Joriki Canada total approximately \$11.8 million.

#### **E. Leased Real Property**

80. Joriki Canada leases all of its production facilities. Each of the Canadian facility leases expire on September 30, 2029. Joriki Canada also leases warehouse space in the GTA. Joriki Canada is current on its monthly lease payments to its landlords, although certain small amounts outstanding for the pre-NOI period have recently been identified following discussions with the landlord of the production facilities.

#### **F. Litigation**

81. As noted previously, Joriki Canada has been named as a defendant, along with Danone and Walmart, in a class action that has been filed in Quebec in relation to the Recall (the "**Quebec Class Action**"). The Quebec Class action seeks compensation for "all persons in Canada who purchased the various Silk and Great Value brand plant based refrigerated beverages recalled due to *Listeria monocytogenes*." The Quebec Class Action has not been certified and the next

scheduled step is a judicial mediation in February 2025. The Applicants do not intend to participate in that mediation although understand their insurers may choose to do so.

82. A separate class action relating to the Recall has been commenced against Danone and Walmart in British Columbia. As of the date hereof, to the best of my knowledge Joriki Canada has not been named as a defendant in that proceeding.

83. Elopak Canada Inc., a vendor of Joriki Canada, has also filed an application with the Ontario Superior Court of Justice seeking damages against Joriki Canada in an approximate amount of \$1 million dollars in relation to unpaid invoices and a failure to take delivery of finished goods (the “**Elopak Claim**”). A hearing date for the Elopak Claim had yet to be scheduled when the NOI was filed.

84. In the weeks prior to the filing of the NOI, certain other trade creditors indicated they intended to commence legal action against Joriki Canada to recover amounts owing to them, although to my knowledge Joriki Canada has not been served with any additional statements of claim or other originating document.

## **V. ASSESSMENT OF STRATEGIC ALTERNATIVES AND THE SALE PROCESS**

85. In August 2024, Joriki engaged Goodmans and A&M to assist it in reviewing and assessing its potential options and alternatives in light of the financial difficulties facing the Company. As part of these efforts, the Company engaged in continuing discussions and negotiations with various stakeholders, including the Senior Lenders and key customers, to discuss the potential options available to the Company.

86. To provide the Company with the liquidity and runway necessary to review its options and continue operations, the Senior Lenders and a key customer provided the Company with additional financing and funding over the course of the past several months.

87. Following this strategic review, the Company, in consultation with the Senior Lenders and their advisors, determined that the best available alternative was to pursue the Sale Process for the Company's business with the assistance of A&M.

88. The Sale Process was initially focused on a potential transaction involving Pittston but was subsequently expanded to include the Canadian operations. Marketing outreach commenced in early November 2024 and indications of interest ("**IOIs**") were received in late November 2024. Following review of the IOIs and in consultation with the Company's advisors and the Senior Lenders, a limited number of interested parties were invited to submit LOIs for a transaction by December 18, 2024. While the Company received LOIs for transactions involving various portions of the Canadian business, certain participants, including a potential purchaser of the U.S. business, ultimately advised the Company they did not intend to pursue a transaction.

89. Following the filing of the NOI, the Applicants, with the assistance of A&M, have continued to engage with potential purchasers of their assets at the Canadian facilities and, as described previously, have entered into an LOI in respect of the Delta facility and are pursuing a transaction in respect of the Toronto facility. Potential purchasers have expressed an interest in hiring some of Joriki Canada's remaining employees and former employees, and, in some cases, re-commencing production for customers. The Applicants intend to advance the negotiation and finalization of definitive transaction documentation with prospective purchasers and return to Court as quickly as possible to seek approval of transactions.

## **VI. LIQUIDATION OF PICKERING**

90. While the Applicants expect to enter into turn-key or other value maximizing transactions for the Delta and Toronto facilities, they believe that the best available option for Pickering is to proceed with an orderly liquidation. No offers were received for the Pickering facility in the Sale Process and the go-forward viability of this site has been impacted by the Recall and the loss of key customers. To that end, the Applicants, with the assistance of a liquidator, intend to proceed with an orderly liquidation of the inventory and equipment at the Pickering facility. A copy of the auction and liquidation services agreement between Joriki Canada and Maynards Industries II Canada Ltd. (the proposed liquidator) dated January 22, 2025, is attached hereto as Exhibit “O”.

## **VII. RELIEF SOUGHT ON THE CCAA APPLICATION**

### **A. The Applicants are Insolvent**

91. Since the Recall, the Applicants have been facing, and continue to face, an ongoing liquidity crisis. The Company is also in default under the Senior Credit Agreement and Subordinate Credit Agreement and is not in a position to repay the obligations outstanding thereunder. While the Senior Lenders have provided various accommodations and additional extensions of credit to the Company over the past several months, they have confirmed that any additional funding (*i.e.* the potential DIP Loan) is conditional on commencing these proceedings and entering into and completing the transactions and an orderly liquidation of Pickering on an expedited basis. Accordingly, the Applicants are insolvent.

### **B. Stay of Proceedings**

92. The current NOI stay expires on January 30, 2024. In light of their financial circumstances, pending and threatened litigation and the possibility of creditors and contractual counterparties

taking adverse action, the Applicants require a continuing stay of proceedings and other protective relief under the proposed Initial Order in order to preserve the status quo and provide breathing space while they work to complete and implement turn-key transactions and an orderly liquidation of Pickering.

93. The Applicants are therefore requesting a stay of proceedings for the Initial Stay Period, and expect to seek an extension of the stay through the implementation of any transactions and the liquidation of Pickering.

### **C. Cash Flow Forecast and DIP Financing**

94. The Applicants' principal use of cash during these CCAA proceedings will consist of restructuring expenses, rent and utility payments and payroll expenses for Joriki Canada's remaining employees. As noted previously, it is possible the Applicants may be able to fund these proceedings and their ongoing expenses from cash on hand and realizations on certain of their assets (*e.g.*, outstanding accounts receivable and initial liquidation proceeds from Pickering). However, the quantum, timing and collectability of these receipts is uncertain at present and, as reflected in the cash flow forecast that I understand will be filed by A&M as proposed Monitor (the "**Cash Flow Forecast**"), it is possible that incremental financing may be required by the Applicants.

95. Accordingly, the Applicants, as borrower, have negotiated a term sheet (the "**DIP Term Sheet**") with the DIP Lender which contemplates a DIP Loan in a maximum principal amount of \$1,200,000, to be secured by a super-priority DIP financing charge (the "**DIP Lender's Charge**"). Based on the Cash Flow Forecast, the DIP Loan is expected to provide the Applicants with sufficient liquidity to fund their current obligations in the ordinary course during these CCAA

proceedings while they work towards entering into and implementing the transactions and an orderly liquidation of Pickering.

96. As noted, although the DIP Term Sheet is in an agreed final form, the DIP Loan remains subject to credit committee approval from the DIP Lender, which is expected to be sought in advance of the hearing for the Initial Order. The Applicants or the proposed Monitor will update the Court in advance of the hearing for the Initial Order on the status of the DIP Loan.

#### **D. Continued Use of Cash Management System**

97. In the ordinary course of its business, the Applicants use a centralized cash management system (the “**Cash Management System**”). As part of the Cash Management System, the Applicants have multiple operating bank accounts in Canada which are used for all day-to-day and corporate operating transactions, including the collection of receipts. The Applicants are seeking the authority to continue to use the Cash Management System. The continued operation of the existing Cash Management System will minimize disruptions and avoid the need to negotiate and implement alternative banking arrangements. The current Cash Management System includes the necessary accounting controls to enable the Applicants and the proposed Monitor to trace funds and ensure that all transactions are adequately ascertainable. As such, the proposed Initial Order authorizes the continuation of the current Cash Management System.

#### **E. The Proposed Monitor**

98. The Applicants are seeking the appointment of A&M as the Monitor in these CCAA proceedings. A&M is the proposal trustee of Joriki Canada and has consented to act as the Monitor, subject to Court approval. I understand a copy of the Consent to Act as Monitor provided by A&M

will be included in the Application Record filed in connection with the application for the proposed Initial Order.

99. I understand from Alan J. Hutchens of A&M that A&M is a trustee within the meaning of Section 2 of the *Bankruptcy and Insolvency Act* (Canada), as amended, and is not subject to any of the restrictions on who may be appointed as monitor set out in Section 11.7(2) of the CCAA.

100. A&M became involved with the Company in August 2024 to assist the Company in its review of financial and restructuring matters and in contemplation of serving as a Court officer if formal restructuring proceedings were commenced. During the course of its mandate, A&M has assisted in reviewing and analyzing the Company's financial and liquidity position (including the Cash Flow Forecast) and restructuring options, including overseeing the Sale Process.

101. The professionals at A&M who will have carriage of this matter have acquired significant knowledge of the Company, its business and financial circumstances, and the overall restructuring efforts of the Company undertaken to date. I believe that A&M is in a position to assist the Applicants with their restructuring efforts in these CCAA proceedings.

#### **F. KERP**

102. Following the Recall, a number of the Company's employees resigned, creating ongoing challenges in ensuring the continuation of normal course operations and resulting in an increased workload for many of the Company's remaining employees. To address this, in early December 2024, the Company, with the consent of the Senior Lenders, implemented a key employee retention program designed to incentivize certain employees who were critical to the ongoing operations of business to remain with the Company (the "**Pre-Filing KERP**").

103. The Pre-Filing KERP remains of vital importance to the Applicants to ensure that the participating employees stay through the conclusion of the Sale Process, any transactions that are entered into, and the final wind-down of the Applicants' business. The Pre-Filing KERP entitles the key employees to a lump sum cash payment (based on a percentage of their target annual compensation), provided that such key employee remains in the employment of Joriki Canada through the earlier of completion of a transaction, and a specified date.

104. The Applicants' remaining senior management were not participants under the Pre-Filing KERP. In connection with commencing these proceedings, the Applicants are seeking authorization to establish a key employee retention program for senior management structured in a manner consistent with the Pre-Filing KERP (the "**Senior Management KERP**") and, together with the Pre-Filing KERP, the "**KERP**"). As with the Pre-Filing KERP participants, the Applicants believe it is critical that the remaining senior management team be incentivized to remain in their roles pending completion of the Sale Process and any transactions that are entered into. Of note, the Company's CEO resigned in December 2024 and the Company's controller recently resigned with the result that the remaining senior management team has had to assume a greater set of responsibilities (on top of the increased responsibilities they had already been dealing with in light of the Company's operational and financial challenges as detailed herein). In addition, given the departure of the CEO, the former CFO and the controller, the remaining senior management team has critical institutional knowledge that is not replaceable.

105. In the Initial Order, the Applicants are seeking: (i) authorization to make the retention payments owing by Joriki Canada under the Pre-Filing KERP; (ii) approval of the KERP; and (iii) the granting of a priority charge (the "**KERP Charge**") to secure the maximum amount that could be owing under the KERP (*i.e.* under both the Pre-Filing KERP and the Senior Management



KERP), which is \$487,500. Given the Pre-Filing KERP has already been approved and implemented by the Company, with the consent of the Senior Lenders, I believe it is critical and appropriate for these authorizations and protections to be granted now so there is no potential uncertainty regarding the status of the Pre-Filing KERP, and so that all participants in the KERP have the same protections.

106. I understand that A&M is supportive of the relief sought relating to the KERP and will be providing additional information on the KERP in its pre-filing report.

#### **G. Administration Charge**

107. The proposed Initial Order contemplates that a Court-ordered charge over the property will be granted in favour of the proposed Monitor (A&M), counsel to the proposed Monitor (Osler, Hoskin & Harcourt LLP) and counsel to the Applicants (Goodmans) to secure the payment of their respective fees and disbursements up to a maximum of \$700,000 for the Initial Stay Period (the “**Administration Charge**”). The Administration Charge is proposed to have first ranking priority over all security interests, trusts (including deemed trusts), liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, the “**Encumbrances**”) on the Property.

108. The Applicants require the expertise, knowledge, and continued participation of the proposed beneficiaries of the Administration Charge during the CCAA proceedings. Each of the beneficiaries of the Administration Charge will have distinct roles in the CCAA proceedings, and will contribute to the Applicants’ restructuring efforts.

109. The quantum of the proposed Administration Charge was estimated by the Applicants, with the assistance of the proposed Monitor. I believe that the Administration Charge is fair and

reasonable in the circumstances. I understand that the proposed Monitor and the Senior Lenders are also supportive of the Administration Charge.

#### **H. Directors and Officers Indemnity and Charge**

110. I am advised by Chris Armstrong of Goodmans, counsel to the Applicants, and believe that, in certain circumstances, directors can be held liable for certain obligations of a company owing to employees and government entities, which may include unpaid wages and vacation pay, together with unremitted sales, goods and services, and harmonized sales taxes.

111. The Company maintains an insurance policy in respect of the potential liability of its directors and officers, as well as those of its subsidiaries (the “**D&O Policy**”). While the D&O Policy insures directors and officers for certain claims that may arise against them in their capacity as directors and/or officers of the Applicants, that coverage is not absolute. Rather, it is subject to several exclusions and limitations, which may result in there being no coverage or insufficient coverage for potential liabilities.

112. The remaining directors and officers of the Applicants have expressed a desire for certainty with respect to their potential personal liability if they continue in their current roles in the CCAA proceedings.

113. Each of the remaining directors and officers has considerable experience with, and knowledge of, the Applicants’ business. The Applicants require, and stakeholders will benefit from, the active involvement of their directors and officers during the CCAA proceedings, including the continuation of the Sale Process and the implementation of any transactions that are entered into. Given the uncertainty surrounding insurance and available indemnities, the Applicants’ directors and officers have indicated that their continued service and involvement in

the CCAA proceedings is conditional upon the granting of a Court-ordered charge on the Property (the “**Directors’ Charge**”) in the amount of \$200,000 to secure the indemnity provided to the directors and officers in the proposed Initial Order in respect of liabilities they may incur during the CCAA proceedings in their capacities as such. The Directors’ Charge would be subordinate to the proposed Administration Charge but will rank in priority to all other Encumbrances.

114. The Applicants believe that the Directors’ Charge is reasonable in the circumstances, especially in light of the aforementioned risks. I understand that the proposed Monitor and the Senior Lenders are supportive of the Directors’ Charge and its quantum. The amount of the Directors’ Charge has been calculated with the assistance of A&M based on the estimated potential exposure of the directors and officers and has been reviewed with me. I understand that A&M will provide further information to the Court on the calculation of the Directors’ Charge in its pre-filing report. The proposed Directors’ Charge would apply only to the extent that the directors and officers do not have coverage under the D&O Policy.

#### **I. Priorities of Charges**

115. It is contemplated that the priorities of the various Court-ordered Charges granted pursuant to the Initial Order, as among them, will be as follows:

- (a) Administration Charge: up to a maximum of \$700,000;
- (b) Directors’ Charge: up to a maximum of \$200,000;
- (c) KERP Charge: up to a maximum amount of \$487,500; and
- (d) DIP Lender’s Charge: up to a maximum of \$1,200,000, plus interest, fees and expenses.

116. The proposed Initial Order provides for the Charges to rank in priority to all Encumbrances in favour of any person. I understand that notice of the CCAA application will be provided to the Applicants' secured creditors, and that the Senior Lenders are supportive of the proposed Charges.

**J. WEPP Relief**

117. I am advised by Chris Armstrong of Goodmans that, in the context of proceedings under the CCAA, section 5(5) of the *Wage Earners Protection Program Act* ("WEPP") provides that "on application by any person, a court may, in proceedings under Division I of Part III of the *Bankruptcy and Insolvency Act* or under the *Companies' Creditors Arrangement Act*, determine that the former employer meets the criteria prescribed by regulation." Pursuant to Section 3.2 of the *Wage Earner Protection Program Regulations*, "for the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations."

118. As outlined herein, Joriki Canada has terminated the employment of all of its employees in Canada other than those retained to wind down its business operations. I understand from Mr. Armstrong that WEPP may provide payments in respect of amounts that may be owing to Joriki Canada's former employees, such as termination and severance pay. Accordingly, the Applicants have determined that it is appropriate to seek a declaration that WEPP is applicable to the Applicants in order to enable the former employees to timely access any benefits to which they may be entitled to under WEPP.

## VIII. CONCLUSION

119. The Applicants, with the assistance of their professional advisors and in consultation with the Senior Lenders and their advisors, are commencing these CCAA proceedings to facilitate the completion of the Sale Process and, ultimately, value maximizing transactions that may also provide benefits to their current and former employees, customers and suppliers. The Applicants believe that the relief sought pursuant to the proposed Initial Order is appropriate and necessary in the circumstances in order to facilitate these continuing efforts, and respectfully requests that the Court grant the proposed Initial Order.

SWORN before me by Michael G. Devon stated as being located in the City of North York in the Province of Ontario, before me at the City of Toronto in the Province of Ontario, on January 22, 2025, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*.

*Madeline Cummings*

A Commissioner for taking affidavits

Madeline Morgan Cummings, a  
Commissioner, etc., Province of Ontario,  
while a Student-at-Law.  
Expires May 31, 2026.

*Michael G. Devon*

MICHAEL G. DEVON

**THIS IS EXHIBIT "A"**  
**TO THE AFFIDAVIT OF MICHAEL G. DEVON**  
**SWORN BEFORE ME OVER VIDEOCONFERENCE**  
**THIS 22<sup>nd</sup> DAY OF JANUARY, 2025**

*Madeline Cummings*

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Commissioner for Taking Affidavits

Food recall warning

# Various Silk and Great Value brand plant based refrigerated beverages recalled due to Listeria monocytogenes

Last updated: 2024-07-08

## Summary

- Product:** Plant based refrigerated beverages
- Issue:** Food - Microbial contamination - Listeria
- What to do:** Do not consume, use, sell, serve, or distribute recalled products
- Distribution:** National



## Affected products

Showing 1 to 10 of 18 entries

Brand	Product	Size	UPC	Codes
Great Value	Almond Beverage Unsweetened Original	1.89 L	6 81131 34208 7	All Best Before dates up to and including 24 OC 04 AND Product code contains 7825
Great Value	Almond Beverage Original	1.89 L	6 81131 34209 4	All Best Before dates up to and including 24 OC 04 AND Product code contains 7825
Great Value	Almond Beverage Vanilla	1.89 L	6 81131 34210 0	All Best Before dates up to and including 24 OC 04 AND Product code contains 7825
Silk	Almond & Coconut Unsweetened	1.89 L	0 25293 00250 0	All Best Before dates up to and including 24 OC 04 AND Product code contains 7825

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Brand	Product	Size	UPC	Codes
Silk	Almond Original	1.89 L	0 25293 00100 8	All Best Before dates up to and including 24 OC 04 AND Product code contains 7825
Silk	Almond Dark Chocolate	1.89 L	0 25293 00135 0	All Best Before dates up to and including 24 OC 04 AND Product code contains 7825
Silk	Almond Unsweetened	1.89 L	0 25293 00150 3	All Best Before dates up to and including 24 OC 04 AND Product code contains 7825
Silk	Almond Unsweetened Vanilla	1.89 L	0 25293 00188 6	All Best Before dates up to and including 24 OC 04 AND Product code contains 7825
Silk	Almond Vanilla	1.89 L	0 25293 00168 8	All Best Before dates up to and including 24 OC 04 AND Product code contains 7825
Silk	Coconut Original	1.89 L	0 25293 00152 7	All Best Before dates up to and including 24 OC 04 AND Product code contains 7825

1

2

Next ➔

## Issue

The affected products are being recalled from the marketplace due to possible *Listeria monocytogenes* contamination.

## What you should do

- If you think you became sick from consuming a recalled product, contact your healthcare provider.
- Check to see if you have recalled products in your home or establishment by looking for the specific product name and size, UPC and codes in the recall alert.
- Do not consume, serve, use, sell, or distribute recalled products.
- Recalled products should be thrown out or returned to the location where they were purchased. Consumers who are unsure if they have purchased the recalled products are advised to contact their retailer.

Food contaminated with *Listeria monocytogenes* may not look or smell spoiled but can still make you sick. Symptoms can include vomiting, nausea, persistent fever, muscle aches, severe headache and neck stiffness. Pregnant women, the elderly and people with weakened immune systems are particularly at risk. Although infected pregnant women may experience only mild, flu-like symptoms, the infection can lead to premature delivery, infection of the newborn or even stillbirth. In severe cases of illness, people may die.



Learn more:

- [Sign up](#) for recall notifications by email and [follow us](#) on social media
- [View our detailed explanation of the food safety investigation and recall process](#)
- [Report a food safety or labelling concern to the CFIA](#)

## Additional information

- ▶ Background
- ▶ What is being done
- ▶ Details
- ▶ Media and public enquiries

### Get notified

Receive notifications for new and updated recalls and alerts by category.

**Date modified:**

2024-07-08

**THIS IS EXHIBIT "B"**  
**TO THE AFFIDAVIT OF MICHAEL G. DEVON**  
**SWORN BEFORE ME OVER VIDEOCONFERENCE**  
**THIS 22<sup>nd</sup> DAY OF JANUARY, 2025**

*Madeline Cummings*

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Commissioner for Taking Affidavits



[Canada.ca](#) > [Departments and agencies](#) > [Public Health Agency of Canada](#)

> [Public Health Notices](#)

# Public Health Notice: Outbreak of Listeria infections linked to recalled plant-based refrigerated beverages

October 11, 2024: Final Notice

i

This notice has been updated to reflect that the outbreak appears to be over and the outbreak investigation has been closed.

## At a glance

Do not consume, use, sell, serve or distribute various recalled plant-based refrigerated beverages.

### At a glance

Illnesses	20
Provinces and territories with illnesses (number of illnesses)	<ul style="list-style-type: none"><li>Alberta (1)</li><li>Ontario (13)</li><li>Quebec (5)</li><li>Nova Scotia (1)</li></ul>
Hospitalizations	15
Deaths	3

Gender	65% female
Age range	7-89  70% of cases are 50 years of age or older
Food Recall	Yes, <u>various Silk and Great Value brand plant-based refrigerated beverages recalled nationally</u> .
Investigation status	Closed

## On this page

- [At a glance](#)
- [Investigation summary.](#)
- [Investigation history.](#)
- [Contact us](#)

## Investigation summary

In total, 20 laboratory-confirmed cases of *Listeria monocytogenes* illness were linked to this outbreak in:

- Alberta (1)
- Ontario (13)
- Quebec (5)
- Nova Scotia (1)

Investigation findings identified plant-based refrigerated beverages from Silk and Great Value as the likely source of the outbreak.

65

On July 8, 2024, a food recall warning was issued for various Silk and Great Value brand plant-based refrigerated beverages, with October 4, 2024 as the latest best before date. For more information on the recalled products, please consult the Canadian Food inspection Agency (CFIA) recall notice on the Government of Canada Recalls and Safety Alerts website.

Food recall warning: Various Silk and Great Value brand plant-based refrigerated beverages recalled due to *Listeria monocytogenes*

People became sick between August 2023 and mid-July 2024. Of the cases reported to us, 15 people have been hospitalized and three individuals have died. Many people who became sick reported drinking recalled plant-based beverages before their illnesses occurred.

The outbreak appears to be over and the investigation has been closed.

The food safety investigation included product and environmental sampling by the companies and the CFIA. The presence of the *L. monocytogenes* outbreak strain was confirmed within the production environment, however the primary site of the contamination within the environment was not able to be identified.

As a result, all production at the facility remains stopped, the manufacturing lines are being disassembled and the facility is being renovated. Production at the facility will not restart until the necessary corrective measures are implemented, including enhanced safety and production protocols, and the CFIA is satisfied that any contamination has been eliminated.

► Timeline of illnesses

# Investigation history

► **Public Health Notice: July 17, 2024**

► **Public Health Notice: July 30, 2024**

► **Public Health Notice: August 12, 2024**

## Related links

- [Various Silk and Great Value brand plant-based refrigerated beverages recalled due to Listeria monocytogenes](#)
- [Ontario Warns About Product Recall Due to Listeria Contamination](#)
- [CFIA's Statement on the food safety investigation related to the recall of various Silk and Great Value brand plant-based refrigerated beverage](#)
- [Risks of listeriosis \(Listeria\)](#)
- [Safe food handling practices](#)
- [Email subscription service for Public Health Notices](#)
- [Recall subscription service](#)

## Contact us

Public Health Agency of Canada

Media Relations

**Telephone:** 613-957-2983

**Email:** [media@hc-sc.gc.ca](mailto:media@hc-sc.gc.ca)

### Public inquiries

**Telephone:** 1-866-225-0709 (toll-free)

**Email:** [info@hc-sc.gc.ca](mailto:info@hc-sc.gc.ca)

**Date modified:**

2024-10-11

**THIS IS EXHIBIT "C"**  
**TO THE AFFIDAVIT OF MICHAEL G. DEVON**  
**SWORN BEFORE ME OVER VIDEOCONFERENCE**  
**THIS 22<sup>nd</sup> DAY OF JANUARY, 2025**

*Madeline Cummings*

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Commissioner for Taking Affidavits





Government  
of Canada

Gouvernement  
du Canada

[Canada.ca](https://Canada.ca) › [Canadian Food Inspection Agency](https://www.inspection.gc.ca)

# Statement on the conclusion of the food safety investigation related to the recall of various Silk and Great Value brand plant-based refrigerated beverages

From: [Canadian Food Inspection Agency](https://www.inspection.gc.ca).

## Statement

October 29, 2024 – Ottawa, Ontario – Canadian Food Inspection Agency

The Canadian Food Inspection Agency (CFIA) issued the following statement related to the recent recall of Silk and Great Value plant-based refrigerated beverages due to *Listeria monocytogenes* contamination:

"The CFIA is deeply saddened by the recent listeriosis outbreak associated with certain Silk and Great Value plant-based beverages. It extends heartfelt sympathies to the families of the three Canadians who tragically lost their lives and all those who have been affected by the outbreak.

With the conclusion of CFIA's food safety investigation related to contaminated products from Danone Canada's third-party manufacturing plant Joriki Inc. in Pickering, we are sharing the details of the findings.

# Initiation of CFIA investigation

On June 20, 2024, our investigation began when Public Health Ontario informed us of an outbreak of listeriosis illness and an initial detection of *Listeria monocytogenes*, in a sample of Silk unsweetened coconut milk. Over the following days, CFIA worked closely with public health partners to confirm the link between the product and the illnesses and deaths.

As soon as the link was confirmed, on July 8, 2024, a recall warning was issued for several Silk and Great Value plant-based refrigerated beverages due to potential *Listeria monocytogenes* contamination, and the affected plant lines were immediately shut down.

As part of the recall being issued, the CFIA visited the Joriki plant in Pickering on 6 occasions, while verifying the affected products were removed from the market. The CFIA continues to monitor the recall's effectiveness.

## Investigation outcomes and results

Since then, Danone Canada and Joriki Inc. and the CFIA conducted product and environmental tests. The presence of *Listeria monocytogenes* in the facility was confirmed on July 9, 2024.

The investigation was not able to confirm the primary source of the contamination within the establishment, which is not uncommon with investigations regarding pasteurized products like plant-based beverages – listeria cannot survive pasteurization – however, cross-contamination could have occurred after processing.

Joriki is required to follow federal laws to ensure the safety of the products they sell. Health Canada's Policy on *Listeria monocytogenes* in ready-to-eat foods also outlines how plants like Joriki should have strict controls in place to prevent listeria contamination.

During the course of its investigation, the CFIA discovered that the facility did not properly implement environmental swabbing and finished product testing in adherence to Health Canada's Policy on *Listeria monocytogenes* in ready-to-eat foods, which is why the CFIA is closely following up to ensure corrective actions are completed and necessary safety measures are in place.

Based on CFIA's 2021 risk assessment which considered things like scientific data, type of food, and manufacturing processes, the Joriki establishment was not considered high-risk before the *Listeria monocytogenes* contamination. As such, the CFIA did not conduct a licence inspection prior to its investigation, however, it had visited the plant in response to consumer complaints.

The consumer complaints received in 2018, 2019 and in 2023-2024 were related to the possible presence of allergens, off-taste, and mould. There is no causal link between mould and listeria.

In all of these consumer complaints cases, the CFIA followed up with the consumer, the retailer, the distributor, and the manufacturer, and where required, Joriki was provided with corrective actions to be undertaken. All necessary action was taken by the establishment to resolve the complaints.

## The CFIA's enforcement tools and next steps

As a result of the food safety investigation, production at Joriki Inc. in Pickering has been fully halted, and significant cleanup and renovations are underway. Manufacturing will not resume until all necessary safety measures are in place, and until we are confident that the risk of contamination has been eliminated.

CFIA inspectors are closely monitoring the situation, continuing to conduct regular visits to ensure that corrective actions are completed before production can restart.

When businesses fail to comply with their obligations under the *Safe Food for Canadians Act* and the *Safe Food for Canadians Regulations* with respect to ensuring the safety of food, the CFIA has several enforcement tools at its disposal such as monetary penalties and suspending or cancellation of licences.

The CFIA will continue to monitor the Pickering facility's progress and will update the public on any further actions taken through our website.

## More to learn

In 2022, the CFIA had completed a three-year survey of plant-based milk alternatives and found them to be generally safe, with no *Listeria monocytogenes* found in the samples taken.

While *Listeria monocytogenes* has typically been linked to products like ready-to-eat meats and unpasteurized dairy products, this is the first time plant-based beverages have been linked to illness in Canada.

This outbreak shows that new risks can and do emerge as scientific evidence evolves, and the CFIA takes them seriously.

The CFIA's Inspector General has already begun an initial review of the circumstances surrounding this recall, and to identify risks that could lead to similar incidents. Additionally, the Inspector General will be inspecting manufactured food establishments including those producing plant-based

products, verifying that establishments are inspected appropriately under the *Safe Food for Canadians Regulations*, and analyzing consumer complaint trends to enhance risk modeling and inspection frequency.

The findings from this review and investigation, coupled with advancements in science, will inform our updates to the risk models, enhancing our ability to safeguard the health of Canadians. While it is the responsibility of food producers to ensure the food they produce is safe, the CFIA will continue to work to protect Canadians."

## Contacts

Media Relations

Canadian Food Inspection Agency

613-773-6600

[cfia.media.acia@canada.ca](mailto:cfia.media.acia@canada.ca)

## Related links

- [Various Silk and Great Value brand plant based refrigerated beverages recalled due to \*Listeria monocytogenes\* – Canada.ca](#)
- [Public Health Notice: Outbreak of Listeria infections linked to recalled plant-based refrigerated beverages – Canada.ca](#)
- [Sign up for recall notifications by email](#)
- [View our detailed explanation of the food safety investigation and recall process](#)
- [Report a food safety or labelling concern to the CFIA](#)

# Stay connected

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YouTube: [Canadian Food Inspection Agency](#)

The Canadian Food Inspection Agency (CFIA) touches the lives of all Canadians in so many positive ways. Each day, hard-working CFIA employees – including inspectors, veterinarians and scientists – inspect food for safety risks, protect plants from pests and invasive species, and respond to animal diseases that could threaten Canada's national herd and human health. Guided by science-based decision-making and modern regulations, the Agency works tirelessly to ensure access to safe and healthy food in Canada, and support access to international markets for our high-quality agricultural products. To learn more, visit [inspection.canada.ca](https://inspection.canada.ca).

Search for related information by keyword: [Health and Safety](#) | [Canadian Food Inspection Agency](#) | [Canada](#) | [Food outbreaks and investigations](#) | [general public](#) | [statements](#) | [Hon. Mark Holland](#)

**Date modified:**

2024-10-29

**THIS IS EXHIBIT “D”  
TO THE AFFIDAVIT OF MICHAEL G. DEVON  
SWORN BEFORE ME OVER VIDEOCONFERENCE  
THIS 22<sup>nd</sup> DAY OF JANUARY, 2025**

*Madeline Cummings*

---

Commissioner for Taking Affidavits

500-06-001321-245

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(Class Action)  
SUPERIOR COURT  
DISTRICT OF MONTREAL

---

JOYCE ROMANO  
Applicant

v.

DANONE INC.  
WAL-MART CANADA CORP.  
JORIKI INC.  
Defendants

---

**AMENDED APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION**  
(ARTICLES 571 AND FOLLOWING C.C.P.)

---

**COPY FOR: JORIKI INC.**  
3431 McNicoll Avenue  
Scarborough, Ontario, M1V 2V3

---

Me Joey Zukran  
**LPC AVOCATS**  
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**BL 6059**

N/D : JZ-270



**CANADA**

**PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL**

**NO: 500-06-001321-245**

**(Class Action)  
SUPERIOR COURT**

**JOYCE ROMANO**, domiciled at 5696 Edgemore, City of Cote St Luc, District of Montreal, Province of Quebec, H4W 1V6

Applicant

v.

**DANONE INC.**, legal person having its head office at 100 rue De Lauzon, City of Boucherville, District of Longueuil, Province of Quebec, J4B 1E6

and

**WAL-MART CANADA CORP.**, legal person having a principal establishment at 17000 Trans-Canada Highway, Kirkland, district of Montreal, Province of Quebec, H9J 2M5

and

**JORIKI INC.**, legal person having its head office at 3431 McNicoll Avenue, Scarborough, Province of Ontario, M1V 2V3

Defendants

---

**AMENDED APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION  
(ARTICLES 571 AND FOLLOWING C.C.P.)**

---

**I. INTRODUCTION**

1. Applicant seeks to institute a class action on behalf of the following class of which she is a member:

<p><b>Class:</b></p> <p>All persons in Canada who purchased <u>or ingested</u> the Various Silk and Great Value brand plant based refrigerated beverages recalled due to <i>Listeria monocytogenes</i>.</p> <p>(hereinafter referred to as the "<b>Class</b>")</p>	<p><b>Groupe:</b></p> <p>Toutes les personnes au Canada ont acheté <u>ou ingéré</u> les diverses boissons végétales réfrigérées de marque Silk et Great Value rappelé en raison de la bactérie <i>Listeria monocytogenes</i>.</p> <p>(ci-après le « <b>Groupe</b> »)</p>
<p><b><u>Family Class:</u></b></p> <p>All persons in Canada who, by virtue of a <u>personal relationship with one or more Class Members</u>, have standing to claim damages pursuant to the <i>Civil Code of Quebec</i>, section 61(1) of the <i>Family Law Act</i>, R.S.O. 1990, c. f.3, as amended, or <u>analogous provincial legislation</u>.</p> <p>(the "<b>Family Class</b>")</p>	<p><b><u>Groupe Famille :</u></b></p> <p>Toutes les personnes au Canada qui, en vertu d'une relation personnelle avec un ou plusieurs membres du Groupe, ont qualité pour agir pour réclamer des dommages en vertu du <i>Code civil du Québec</i>, de l'article 61(1) de la <i>Loi sur le droit de la famille</i>, L.R.O. 1990, c. f.3, telle qu'amendée, ou d'une législation provinciale analogue.</p> <p>(le « <b>Groupe Famille</b> »)</p>

2. On July 8, 2024, the Public Health Agency of Canada (PHAC) issued a recall of the following plant based refrigerated beverages sold or distributed by the Defendants, as it appears from **Exhibit P-1** (all with best before dates up to and including "24 OC 04" and product code contains "7825", except for the Silk Coconut Unsweetened with a best before date up to and including "24 SE 27"):

Great Value	Almond Beverage Unsweetened Original	1.89 L	6 81131 34208 7
Great Value	Almond Beverage Original	1.89 L	6 81131 34209 4
Great Value	Almond Beverage Vanilla	1.89 L	6 81131 34210 0
Silk	Almond & Coconut Unsweetened	1.89 L	0 25293 00250 0
Silk	Almond Original	1.89 L	0 25293 00100 8
Silk	Almond Dark Chocolate	1.89 L	0 25293 00135 0
Silk	Almond Unsweetened	1.89 L	0 25293 00150 3

Silk	Almond Unsweetened Vanilla	1.89 L	0 25293 00188 6
Silk	Almond Vanilla	1.89 L	0 25293 00168 8
Silk	Coconut Original	1.89 L	0 25293 00152 7
Silk	Coconut Unsweetened	1.89 L	0 25293 00244 9
Silk	Oat Original	1.75 L	0 36632 07240 5
Silk	Oat Vanilla	1.75 L	0 36632 07241 2
Silk	Oat Dark Chocolate	1.75 L	0 36632 07239 9
Silk	Oat Unsweetened	1.75 L	0 36632 07532 1
Silk	Oat Unsweetened Vanilla	1.75 L	0 56800 72749 4
Silk	Almond & Cashew Unsweetened	1.75 L	0 36632 07235 1
Silk	Almond & Cashew Unsweetened Vanilla	1.75 L	0 36632 07234 4

3. On July 17, 2024, the Public Health Agency of Canada provided an update and issued a public health notice regarding the outbreak of Listeria infections, including 9 hospitalizations and 2 deaths, Applicant disclosing **Exhibit P-2**; On August 12, 2024, the Agency updated the data and reported 20 laboratory-confirmed cases of Listeria monocytogenes illness in Quebec, Ontario, Alberta and Nova Scotia, 15 hospitalizations and 3 deaths (Exhibit P-2.1). Applicant believes that the numbers are significantly higher as further detailed at paragraphs 26.1 and 26.2 below;
4. On July 17, 2024, Defendant Danone Inc. ("**Danone**") issued a public statement in which its president, Frédéric Guichard, stated "*Food safety, quality, and the health of our consumers are, and will always be, at the core of everything we do*", Applicant disclosing **Exhibit P-3**. Clearly, Danone failed to live up to this standard with respect to Class members;
  - 4.1 On August 7, 2024, the Canadian Food Inspection Agency released its "Statement on the food safety investigation related to the recall of various Silk and Great Value brand plant-based refrigerated beverages", stating that Danone's third-party manufacturer is Defendant Joriki Inc. ("**Joriki**"), as it appears from **Exhibit P-8**;

5. Defendant Wal-Mart Canada Corp. ("**Wal-Mart**") simply posted a hyperlink on its website to the Public Health Agency of Canada website, as it appears from **Exhibit P-4**;

## **II. THE PARTIES**

6. Defendant Danone Inc. operates in the "industrie du lait de consommation" and "fabrication et distribution de produits laitiers", with its head office in the province of Quebec, the whole as appears from the *CIDREQ* report, **Exhibit P-5** (Danone also confirms its head offices are in Quebec in Exhibit P-3);
7. Applicant discloses the *CIDREQ* report for Defendant Wal-Mart Canada Corp. as **Exhibit P-6**. The "Great Value" line is one of Wal-Mart's retail brands;
- 7.1 Defendant Joriki Inc. is Danone's third-party manufacturer, Joriki Inc., with its head office in Scarborough, Ontario. According to the Canadian Food Inspection Agency (Exhibit P-8), all affected products were made on a dedicated production line at Joriki's facility in Pickering, Ontario;
8. The Applicant is a consumer who has been purchasing and ingesting plant based refrigerated beverages, including those recalled by Public Health Agency of Canada, for several years;

## **III. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION (s. 575 C.C.P.):**

### **A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT:**

9. Applicant purchased and ingested a variety the following recalled products on a weekly or bi-weekly basis from the IGA in Côte St-Luc:
  - Silk Almond unsweetened;
  - Silk Almond unsweetened vanilla;
  - Silk Oat unsweetened;
  - Silk Oat vanilla unsweetened;
  - Silk Almond & cashew unsweetened;
  - Silk Almond & cashew unsweetened vanilla.
10. Applicant's legal syllogism is notably based on sections 37, 38 and 53 of the CPA and article 1469 and 1473 of the Civil Code of Québec;
11. Obviously, Applicant would have never purchased or ingested these products had she been aware of the health risks;
12. Given that Applicant and her family (including children) have already consumed the recalled products, it is impossible for her to return them to IGA for a refund, because she does not have the product/cartons and did not keep her receipts;

13. On July 18, 2024, the Applicant tried to complete an online request for refunds for the above listed recalled products that she purchased and ingested, but the Defendant's form required her to provide a picture of the carton, which the Applicant does not have, as it appears from Danone's refund form disclosed as **Exhibit P-7**;
14. The reason why the Applicant does not have the cartons is because her recycling bin was picked up on Tuesday, July 16, 2024 and her garbage bin was picked up on Wednesday, July 17, 2024;
15. On July 18, 2024, the Applicant went to the IGA where she purchased the recalled beverages from to ask for a refund. The clerk escalated the situation by calling in a manager, and the manager then escalated to a director, but IGA ultimately refused to refund her because she did not have a receipt or the cartons;
16. Offering refunds for products that have been consumed and cartons that have been disposed of is a completely inadequate refund program; Applicant believes that following discovery it will be proven that the Defendants issued very few refunds, if any at all, as many Class members are in a similar situation;
17. Applicant hereby claims compensatory, moral and punitive damages, as well as damages from trouble and inconvenience, on her behalf and on behalf of all Class and Family Class members, pursuant to the Civil Code, the *Consumer Protection Act*, the Quebec Charter and the Common Law as well as the analogous provincial legislation (for Class and Family Class members residing outside of Quebec);
18. The Applicant's damages are a direct and proximate result of the Defendants' omissions, breaches and negligence, as well as the inadequacy of their "refund" programs;

**B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:**

19. All Class members Family Class members have a common interest in proving the Defendants' liability solidarily;
20. Each Class and Family Class member is also justified in claiming damages and punitive damages against the Defendants;
21. All of the damages to the Class and Family members are a direct and proximate result of the Defendants' misconduct;
22. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;
23. **The recourses of the Class and Family members raise identical, similar or related questions of fact or law, namely:**

- a) Are the recalled Silk and Great Value brand plant based refrigerated beverages affected by a safety risk?
- b) Are the recalled Silk and Great Value brand plant based refrigerated beverages fit for the purposes for which goods of that kind are ordinarily used?
- c) Is the Defendants' responsibility engaged in view of the *Consumer Protection Act*, the Civil Code of Quebec, the Quebec *Charter*, or the Common Law as well as the analogous provincial legislation (for Class and Family Class members residing outside of Quebec)?
- d) Were the Defendants negligent in the management of the recall programs?
- e) If the Defendants' responsibility is engaged, are Class members or Family Class members entitled to compensatory, moral or punitive damages, or damages for trouble and inconvenience, and in what amounts?
- f) What is the Defendants' liability to the Class members and Family Class members for all of the claims asserted in connection with the recalled Silk and Great Value brand plant based refrigerated beverages covered by this class action?
- g) Are the Defendants solidarity liable?

### C) THE COMPOSITION OF THE CLASS

- 24. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
- 25. Applicant estimates that tens of thousands of the various recalled Silk and Great Value brand plant based refrigerated beverages were sold across Canada, if not more;
- 26. Class members are very numerous and are dispersed across the province and Canada;
- 26.1 Following the initial filing of this proposed class action and the media reports that ensued, communicated en liasse as Exhibit P-9, more than 4,900 individuals signed up to Class Counsel's website established for this case (www.lpclex.com/silk), as it appears from the redacted list filed under seal and confidentially as Exhibit P-10;
- 26.2 As it appears from the comments in Exhibit P-10, there is an important number of individuals who have experienced symptoms and health issues after ingesting the recalled products;

27. These facts demonstrate that it would be impossible to contact each and every Class member to obtain mandates and to join them in one action;
28. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

**D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS**

29. The Applicant requests that she be appointed the status of representative plaintiff for the following main reasons:
  - a) she is a member of the Class and has a personal interest in seeking the conclusions proposed herein;
  - b) she is competent, in that he has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
  - c) her interests are not antagonistic to those of other Class members;
30. Additionally, the Applicant respectfully adds that:
  - a) she has the time, energy, will and determination to assume all the responsibilities incumbent upon her in order to diligently carry out the action;
  - b) after learning about the situation, she mandated her attorneys to file the present application for the sole purpose of having her rights, as well as the rights of other Class members, recognized and protected so that they can be adequately compensated;
  - c) she understands the nature of the action; and
  - d) she wants to hold the Defendants accountable so that they put measures in place for the future so that such serious safety issues do not repeat themselves, especially for a staple product such as milk that entire families – including young children – consume.
31. As for identifying other Class members, the Applicant draws certain inferences from the situation and realizes that by all accounts, there is a very significant number of Class members that find themselves in an identical situation, and that it would not be useful to attempt to identify each of them given their sheer numbers. Nonetheless, Exhibit P-10 demonstrates that more than 4,900 individuals have signed up to Class Counsel's website established for this case;
32. For the above reasons, the Applicant respectfully submits that her interest and competence are such that the present class action could proceed fairly and in the

best interest of Class members;

#### **IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

33. The action that the Applicant wishes to institute on behalf of the members of the Class and Family Class is an action in damages;
34. The conclusions that the Applicant wishes to introduce by way of an originating application are:

**GRANT** the Representative Plaintiff's action against the Defendants on behalf of all Class and Family Class Members;

**CONDEMN** the Defendants, solidarily, to pay compensatory, moral and punitive damages, and damages for trouble and inconvenience, to the Representative Plaintiff and the Class and Family Class members in amounts to be determined on the merits;

**ORDER** the collective recovery of all damages to the Class and Family Class members;

**CONDEMN** the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize a Class Action*;

**ORDER** the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

**ORDER** that the claims of individual Class and Family Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

**CONDEMN** the Defendants, solidarily, to bear the costs of the present action at all levels, including the cost of all exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders.

35. The interests of justice favour that this Application be granted in accordance with its conclusions;

#### **V. JURISDICTION AND NATIONAL CLASS**

36. The Applicant requests that this class action be exercised before the Superior Court in the district of Montreal. This Court has jurisdiction to authorize a national class action pursuant to article 3148(1) CCQ.



**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

1. **GRANT** the present application;
2. **AUTHORIZE** the bringing of a class action in the form of an originating application in damages;
3. **APPOINT** the Applicant the status of Representative Plaintiff of the persons included in the Class and Family Class herein described as:

<p><b>Class:</b></p> <p>All persons in Canada who purchased <u>or ingested</u> the Various Silk and Great Value brand plant based refrigerated beverages recalled due to <i>Listeria monocytogenes</i>.</p> <p>(hereinafter referred to as the "<b>Class</b>")</p>	<p><b>Groupe:</b></p> <p>Toutes les personnes au Canada ont acheté <u>ou ingéré</u> les diverses boissons végétales réfrigérées de marque Silk et Great Value rappelé en raison de la bactérie <i>Listeria monocytogenes</i>.</p> <p>(ci-après le « <b>Groupe</b> »)</p>
<p><b><u>Family Class:</u></b></p> <p><u>All persons in Canada who, by virtue of a personal relationship with one or more Class Members, have standing to claim damages pursuant to the <i>Civil Code of Quebec</i>, section 61(1) of the <i>Family Law Act</i>, R.S.O. 1990, c. f.3, as amended, or analogous provincial legislation.</u></p> <p>(the "<b>Family Class</b>")</p>	<p><b><u>Groupe Famille :</u></b></p> <p><u>Toutes les personnes au Canada qui, en vertu d'une relation personnelle avec un ou plusieurs membres du Groupe, ont qualité pour agir pour réclamer des dommages en vertu du <i>Code civil du Québec</i>, de l'article 61(1) de la <i>Loi sur le droit de la famille</i>, L.R.O. 1990, c. f.3, telle qu'amendée, ou d'une législation provinciale analogue.</u></p> <p>(le « <b>Groupe Famille</b> »)</p>

4. **IDENTIFY** the principle questions of fact and law to be treated collectively as the following:
  - a) Are the recalled Silk and Great Value brand plant based refrigerated beverages affected by a safety risk?
  - b) Are the recalled Silk and Great Value brand plant based refrigerated beverages fit for the purposes for which goods of that kind are ordinarily used?
  - c) Is the Defendants' responsibility engaged in view of the *Consumer Protection Act*, the *Civil Code of Quebec*, the *Quebec Charter*, or the

Common Law as well as the analogous provincial legislation (for Class and Family Class members residing outside of Quebec)?

- d) Were the Defendants negligent in the management of the recall programs?
- e) If the Defendants' responsibility is engaged, are Class members or Family Class members entitled to compensatory, moral or punitive damages, or damages for trouble and inconvenience, and in what amounts?
- f) What is the Defendants' liability to the Class members and Family Class members for all of the claims asserted in connection with the recalled Silk and Great Value brand plant based refrigerated beverages covered by this class action?
- g) Are the Defendants solidarily liable?

5. **IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

- a) **GRANT** the Representative Plaintiff's action against the Defendants on behalf of all Class and Family Class Members;
- b) **CONDEMN** the Defendants, solidarily, to pay compensatory, moral and punitive damages, and damages for trouble and inconvenience, to the Representative Plaintiff and the Class and Family Class members in amounts to be determined on the merits;
- c) **ORDER** the collective recovery of all damages to the Class and Family Class members;
- d) **CONDEMN** the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to Authorize a Class Action;
- e) **ORDER** the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
- f) **ORDER** that the claims of individual Class and Family Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
- g) **CONDEMN** the Defendants, solidarily, to bear the costs of the present action at all levels, including the cost of all exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders.

6. **ORDER** the publication of a notice to the Class and Family Class Members in accordance with article 579 C.C.P., pursuant to a further order of the Court, and **ORDER** the Defendants to pay for said publication costs;
7. **FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class and Family Class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;
8. **DECLARE** that all members of the Class and Family Class that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;
9. **RENDER** any other order that this Honourable Court shall determine;
10. **THE WHOLE** with costs, including the court stamp, bailiff fees, stenographer fees and publication fees.

Montreal, August 14, 2024

(s) LPC Avocats

**LPC AVOCATS**

Mtre Joey Zukran / Mtre Léa Bruyère

Attorneys for the Applicant

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**SUMMONS**  
**(ARTICLES 145 AND FOLLOWING C.C.P.)**

**Filing of a judicial application**

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the Superior Court in the judicial district of **Montreal**.

**Defendant's answer**

You must answer the application in writing, personally or through a lawyer, at the courthouse of **Montreal** situated at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

**Failure to answer**

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

**Content of answer**

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

**Change of judicial district**

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main

residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

### **Transfer of application to Small Claims Division**

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

### **Calling to a case management conference**

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

### **Exhibits supporting the application**

In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

- Exhibit P-1:** July 8, 2024, Public Health Agency of Canada recall notice;
- Exhibit P-2:** July 17, 2024, update provided by the Public Health Agency of Canada;
- Exhibit P-2.1:** August 12, 2024, update provided by the Public Health Agency of Canada;
- Exhibit P-3:** July 17, 2024, public statement issued by Danone;
- Exhibit P-4:** Extract of Wal-Mart's website;
- Exhibit P-5:** Extract of the enterprises' information statement from the Quebec enterprise register ("CIDREQ") for Danone Inc.;
- Exhibit P-6:** Extract of the enterprises' information statement from the Quebec enterprise register ("CIDREQ") for Wal-Mart Canada Corp.;
- Exhibit P-7:** Danone refund Form;
- Exhibit P-8:** August 7, 2024, statement from the Canadian Food Inspection

Agency titled "Statement on the food safety investigation related to the recall of various Silk and Great Value brand plant-based refrigerated beverages";

**Exhibit P-9:** En liasse, news articles reporting on the proposed class action;

**Exhibit P-10:** [UNDER SEAL] Confidential list of Class members and their comments as registered on Class Counsel's website [www.lpclex.com/silk](http://www.lpclex.com/silk).

These exhibits are available on request.

### **Notice of presentation of an application**

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, August 14, 2024

(s) LPC Avocats

**LPC AVOCATS**

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Email: [jzukran@lpclex.com](mailto:jzukran@lpclex.com)

**NOTICE OF PRESENTATION**  
(articles 146 and 574 al. 2 C.C.P.)

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**TO: DANONE INC.**  
100 rue De Lauzon  
Boucherville, Quebec, J4B 1E6

**WAL-MART CANADA CORP.**  
17000 Trans-Canada Highway  
Kirkland, Quebec, H9J 2M5

**JORIKI INC.**  
3431 McNicoll Avenue  
Scarborough, Ontario, M1V 2V3

**DEFENDANTS**

**TAKE NOTICE** that Applicant's *Amended Application to Authorize the Bringing of a Class Action* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action Division.

Montreal, August 14, 2024

(s) LPC Avocats

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**LPC AVOCATS**

Mtre Joey Zukran / Mtre Léa Bruyère  
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**THIS IS EXHIBIT "E"**  
**TO THE AFFIDAVIT OF MICHAEL G. DEVON**  
**SWORN BEFORE ME OVER VIDEOCONFERENCE**  
**THIS 22<sup>nd</sup> DAY OF JANUARY, 2025**

*Madeline Cummings*

---

Commissioner for Taking Affidavits





McCarthy Tétrault LLP  
PO Box 48, Suite 5300  
Toronto-Dominion Bank Tower  
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Canada  
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**Via Email:** [BRadnoff@dickinson-wright.com](mailto:BRadnoff@dickinson-wright.com) and [WHulton@dickinson-wright.com](mailto:WHulton@dickinson-wright.com)

Brian Radnoff and Wendy Hulton  
Dickinson Wright LLP  
199 Bay St. Suite 2200,  
Toronto, ON M5L 1G4

Dear Counsel:

**Re: Notice of claims and potential claims, and demand for compensation and indemnity, by Danone Inc. ("Danone") against Joriki Inc. ("Joriki")**

We are legal counsel for Danone.

We write on behalf of Danone to provide notice of claims and potential claims by Danone against Joriki, and demand compensation and indemnity from Joriki with respect to Danone's damages.

Danone's claims relate to certain Silk and Great Value Products (the "**Products**") manufactured and delivered to Danone by Joriki. The Products were subject to a government recall as a result of potential health concerns. Danone has and will continue to suffer damages as a result of the recall of the product.

Please ensure that Joriki's insurers are promptly notified of Danone's claims and demands, that all relevant documents are preserved, and that no steps are taken which may have the effect of depreciating Joriki's assets or eroding its insurance coverage.

Kindly acknowledge receipt of this correspondence. We look forward to hearing from you promptly.

Yours truly,

McCarthy Tétrault LLP

Christopher Hubbard

CH/ef

e.c.: Solomon McKenzie, *McCarthy Tétrault LLP*

**THIS IS EXHIBIT “F”  
TO THE AFFIDAVIT OF MICHAEL G. DEVON  
SWORN BEFORE ME OVER VIDEOCONFERENCE  
THIS 22<sup>nd</sup> DAY OF JANUARY, 2025**

*Madeline Cummings*

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Commissioner for Taking Affidavits

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## Consolidated financial statements of Joriki Inc.

June 30, 2023

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## Independent Auditor's Report

To the Shareholders of  
Joriki Inc.

### Opinion

We have audited the consolidated financial statements of Joriki Inc. (the "Company"), which comprise the consolidated balance sheet as at June 30, 2023, and the consolidated statements of loss, deficit and cash flows for the year then ended, and notes to the financial statements, including a summary of significant accounting policies (collectively referred to as the "financial statements").

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Company as at June 30, 2023, and the results of its operations and its cash flows for the year then ended in accordance with Canadian accounting standards for private enterprises ("ASPE").

### Basis for Opinion

We conducted our audit in accordance with Canadian generally accepted auditing standards ("Canadian GAAS"). Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of our report. We are independent of the Company in accordance with the ethical requirements that are relevant to our audit of the financial statements in Canada, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

### Responsibilities of Management and Those Charged with Governance for the Financial Statements

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with ASPE, and for such internal control as management determines is necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is responsible for assessing the Company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Company or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Company's financial reporting process.

## Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian GAAS will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these consolidated financial statements.

As part of an audit in accordance with Canadian GAAS, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Company's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Company to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information of the entities or business activities within the Company to express an opinion on the consolidated financial statements. We are responsible for the direction, supervision and performance of the group audit. We remain solely responsible for our audit opinion.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

*Deloitte LLP*

Chartered Professional Accountants  
Licensed Public Accountants  
October 27, 2023

**Joriki Inc.****Consolidated statement of loss**

Year ended June 30, 2023

	Notes	2023 \$	2022 \$
<b>Revenue</b>		<b>164,271,468</b>	138,700,968
Cost of sales (Schedule 1)		<b>149,897,914</b>	125,383,353
Gross profit		<b>14,373,554</b>	13,317,615
<b>Expenses</b>			
Operating, general and administrative		<b>8,073,437</b>	5,035,540
Finance	9	<b>13,659,813</b>	4,832,865
Amortization of intangible assets		<b>3,076,771</b>	2,983,791
Professional fees		<b>491,814</b>	357,407
		<b>25,301,835</b>	13,209,603
(Loss) income before undernoted		<b>(10,928,281)</b>	108,012
<b>Other expenses</b>			
US plant start up costs	5	<b>15,416,919</b>	3,463,888
Foreign exchange loss		<b>267,924</b>	233,422
Other expenses		<b>196,214</b>	810,039
		<b>15,881,057</b>	4,507,349
Loss before income taxes		<b>(26,809,338)</b>	(4,399,337)
Income tax recovery	20	<b>—</b>	(469,936)
<b>Net loss</b>		<b>(26,809,338)</b>	(3,929,401)

The accompanying notes are an integral part of the consolidated financial statements.

**Joriki Inc.****Consolidated balance sheet**

As at June 30, 2023

	Notes	2023 \$	2022 \$
<b>Assets</b>			
Current assets			
Cash		936,485	1,235,557
Accounts receivable		17,225,629	15,982,395
Income taxes receivable	20	—	569,414
Current portion of other receivables	3	224,376	321,024
Inventories	4	9,145,646	12,398,660
Prepays and other assets		1,130,611	1,075,571
		<b>28,662,747</b>	<b>31,582,621</b>
Other receivables	3	—	237,800
Due from related parties	17	48,597	10,289
Property and equipment	6	151,837,996	81,955,979
Intangible assets	7	16,975,779	20,023,441
Goodwill		13,467,811	13,467,811
		<b>210,992,930</b>	<b>147,277,941</b>
<b>Liabilities</b>			
Current liabilities			
Accounts payable and accrued liabilities	8	27,200,804	22,781,548
Revolving credit facility	10	7,500,000	9,500,000
Current portion of lease liability	14	283,835	—
		<b>34,984,639</b>	<b>32,281,548</b>
Long-term debt	11	120,616,965	58,318,072
Related party sub-debt	12	51,702,585	29,879,550
Long-term lease liability	14	4,775,136	1,462,025
		<b>212,079,325</b>	<b>121,941,195</b>
Commitments	16		
<b>Shareholders' equity</b>			
Share capital	13	29,572,073	29,372,073
Deficit		(30,844,665)	(4,035,327)
Cumulative translation adjustment		186,197	—
		<b>(1,086,395)</b>	<b>25,336,746</b>
		<b>210,992,930</b>	<b>147,277,941</b>

The accompanying notes are an integral part of the consolidated financial statements.

Approved by the Board

\_\_\_\_\_, Director

\_\_\_\_\_, Director



**Joriki Inc.****Consolidated statement of deficit**

Year ended June 30, 2023

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	<b>2023</b>	2022
	<b>\$</b>	<b>\$</b>
<b>(Deficit) retained earnings, beginning of year</b>	<b>(4,035,327)</b>	110,654
Dividends	—	(216,580)
Net loss for the year	<b>(26,809,338)</b>	(3,929,401)
<b>Deficit, end of year</b>	<b>(30,844,665)</b>	(4,035,327)

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The accompanying notes are an integral part of the consolidated financial statements.

**Joriki Inc.****Consolidated statement of cash flows**

Year ended June 30, 2023

	Notes	2023 \$	2022 \$
<b>Operating activities</b>			
Net loss for the year		(26,809,338)	(3,929,401)
Items not affecting cash			
Amortization of property and equipment		4,763,056	4,045,736
Amortization of intangible assets		3,076,771	2,983,791
Amortization of non-cash lease liability	14	(55,456)	—
Amortization of transaction costs on term loans		228,147	186,401
Non-cash interest accrual		4,323,035	2,381,673
Straight line lease adjustment		342,403	1,462,025
Cumulative translation adjustment		186,197	—
Changes in non-cash operating working capital items	15	6,943,410	(1,701,345)
		<b>(7,001,775)</b>	<b>5,428,880</b>
<b>Investing activities</b>			
Purchase of property and equipment		(71,335,073)	(53,708,092)
Proceeds from repayment of other receivables		334,448	1,133,245
Purchase of intangible assets		(29,109)	(280,482)
Changes in related party balances		(38,308)	—
		<b>(71,068,042)</b>	<b>(52,855,329)</b>
<b>Financing activities</b>			
Proceeds from capital contributions	13	200,000	—
Redemption of shares	13	—	(202,217)
Repayment of revolving credit facility	10	(2,000,000)	—
Proceeds from revolving credit facility	10	—	5,413,684
Proceeds from long-term debt	11	62,070,745	40,352,575
Proceeds from related party sub-debt	12	17,500,000	—
Dividends paid		—	(216,580)
		<b>77,770,745</b>	<b>45,347,462</b>
Net decrease in cash		(299,072)	(2,078,987)
Cash, beginning of year		1,235,557	3,314,544
<b>Cash, end of year</b>		<b>936,485</b>	<b>1,235,557</b>

The accompanying notes are an integral part of the consolidated financial statements.

**Joriki Inc.****Notes to the consolidated financial statements**June 30, 2023

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**1. Description of the business**

Joriki Inc. is incorporated under the laws of Ontario with its headquarters located in Scarborough, Ontario. The Company manufactures and packages juices, drinks and plant-based beverages at manufacturing locations in Ontario located in Scarborough and Pickering, in Vancouver, British Columbia, and in Pittston, Pennsylvania. The Pittston location is owned and operated by its wholly owned subsidiary, Joriki USA Inc.

**2. Accounting policies***Basis of presentation and consolidation*

The consolidated financial statements have been prepared in accordance with Canadian accounting standards for private enterprises ("ASPE").

The consolidated financial statements include the accounts of Joriki Inc. and its subsidiary, Joriki USA Inc.

These consolidated financial statements include the assets and liabilities and results of operations of the Company and those of its wholly-owned subsidiaries. All intercompany transactions and balances have been fully eliminated.

*Cash*

Cash consists of cash in bank.

*Inventories*

Inventory consists primarily of ingredients and packaging materials. Inventory is valued at the lower of cost and net realizable value, with cost determined on a first-in, first-out basis. Net realizable value is the estimated selling price in the ordinary course of business, less estimated costs necessary to make the sale. Reversals of previous write-downs to net realizable value are permitted when there is a subsequent increase in the value of inventories.

*Financial instruments*

Financial assets and financial liabilities are initially recognized at fair value when the Company becomes a party to the contractual provisions of the financial instrument. Subsequently, all financial instruments are measured at amortized cost except for derivative financial instruments that are not designated in a qualifying hedging relationship, which are initially measured at fair value and then subsequently re-measured at their fair value at each reporting date with the resulting gain or loss being recognized immediately in net earnings.

Transaction costs related to financial instruments measured subsequent to initial recognition at fair value are expensed as incurred. Transaction costs related to other financial instruments are added to the carrying value of the asset or netted against the carrying value of the liability and are then recognized over the expected life of the instrument using the straight-line method. Any premium or discount related to an instrument measured at amortized cost is amortized over the expected life of the item using the straight-line method and recognized in net earnings as interest income or expense.

**Joriki Inc.****Notes to the consolidated financial statements**June 30, 2023

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**2. Accounting policies (continued)***Financial instruments (continued)*

With respect to financial assets measured at cost or amortized cost, the Company recognizes in net earnings an impairment loss, if any, when there are indicators of impairment and it determines that a significant adverse change has occurred during the period in the expected timing or amount of future cash flows. When the extent of impairment of a previously written-down asset decreases and the decrease can be related to an event occurring after the impairment was recognized, the previously recognized impairment loss is reversed to net earnings in the period the reversal occurs.

*Property and equipment*

Property and equipment are recorded at cost. Amortization is based on the estimated useful life of the item using the following methods and rates or term:

	Basis	Useful life
Manufacturing and processing equipment	Straight-line	5-15 years
Office and laboratory equipment	Straight-line	10 years
Leasehold improvements	Straight-line	Term of lease

Construction in progress includes direct construction or development costs, and overhead costs directly attributable to the construction.

*Impairment of long-lived assets*

Long-lived assets such as property and equipment and intangible assets (other than indefinite life intangible assets) are tested for recoverability whenever events or changes in circumstances indicate that their carrying amount may not be recoverable. An impairment loss is recognized when the carrying value exceeds the total undiscounted cash flows expected from the use and eventual disposition of the item. The amount of the impairment loss is determined as the excess of the carrying value of the asset over its fair value at the date of impairment.

*Intangible assets*

Intangible assets, except for those not subject to amortization, are recorded at cost. Amortization is based on the estimated useful life of the item. The Company has intangible assets in the following forms:

	Basis	Useful life
Customer relationships	Straight-line	10 years
Trade names	Straight-line	10 years
Below market leases	Straight-line	4 years
Software	Straight-line	3 years

*Goodwill*

Goodwill represents the excess of the purchase price over the fair value of the net identifiable assets of acquired businesses which includes customer lists and is tested for impairment whenever an event or circumstance occurs that indicates that goodwill might be impaired. When the carrying amount of a reporting unit, including goodwill, exceeds its fair value, a goodwill impairment loss is recognized in net earnings in an amount equal to the excess. The Company has determined that there is nil impairment of goodwill at June 30, 2023 (nil in 2022).

**Joriki Inc.****Notes to the consolidated financial statements**June 30, 2023

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**2. Accounting policies (continued)***Deferred transaction and borrowing costs*

Deferred transaction and borrowing costs in respect of the credit agreements are amortized on a straight-line basis over the term of the related financing agreement and are presented net of long-term debt.

*Foreign currency translation*

Monetary assets and liabilities denominated in foreign currencies are translated to Canadian dollars at exchange rates in effect at the balance sheet date. Non-monetary assets and liabilities are translated at rates of exchange at each transaction date. Revenue and expenses are translated at the rate of exchange at each transaction date.

The Company's operation in the United States is classified as a "self-sustaining" operation for accounting purposes and therefore its financial statements are translated into Canadian dollars using the current rate method. Assets and liabilities are translated at exchange rates in effect at the balance sheet date while revenues and expenses are translated at average exchange rates prevailing during the year. The resulting translation adjustment is accumulated as a separate component of shareholders' equity until there is a reduction in the net investment.

*Leases*

Leases are classified as capital or operating. Leases which transfer substantially all of the benefits and risks incidental to ownership of property and equipment are accounted for as capital leases. Assets acquired under capital leases are amortized on a declining balance method over the estimated useful lives of the assets.

All other leases are accounted for as operating leases and are expensed on a straight-line basis over the term of the lease.

*Derivative financial instruments and cash flow hedging strategy*

The Company utilizes derivative financial instruments in the management of its foreign currency exposure. The Company's policy is not to utilize derivative financial instruments for trading or speculative purposes.

The forward contracts used by the Company to manage its foreign exchange exposure do not qualify for hedge accounting. Where appropriate, the Company has also utilized option contracts in managing its foreign currency exposure; these contracts do not qualify for hedge accounting.

Both the options, and the forward contracts that do not qualify for hedge accounting, are initially recorded at fair value and changes in fair value are recognized in net income for the year. Transaction costs to acquire or dispose of these instruments are recognized in net income in the year during which they are incurred. Where the Company has received a premium for any options contracts that it has entered into, the premium is deferred and amortized into income over the term of the contract.

*Income taxes*

The Company follows the taxes payable method of accounting for income taxes. Under this method, the Company reports as an expense (income) of the period for only the cost (benefit) of current income taxes for that period, determined in accordance with the rules established by taxation authorities.

**2. Accounting policies (continued)***Income taxes (continued)*

The liability for current income taxes included in the balance sheet is the cost (benefit) of current income taxes for current and prior periods less amounts already paid in respect of these income taxes. When the amount already paid in respect of the cost (benefit) of current income taxes for a period exceeds the liability for that period, any excess amount is shown as an asset. When a tax loss is used to recover income taxes previously paid, the benefit is recognized in the period in which the tax loss occurs since the benefit will be realized.

*Revenue recognition*

Revenue is recognized at the time of shipment of goods or when goods are produced according to terms with the customer, when significant risks and benefits of ownership are considered to be transferred to the purchaser, persuasive evidence of an agreement exists, the terms are fixed or determinable, and collection is reasonably assured.

*Use of estimates*

The preparation of consolidated financial statements in conformity with ASPE requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenue and expenses during the reporting period. Key components of the consolidated financial statements requiring management to make estimates include the provision for doubtful accounts in respect of receivables, the cost and net realizable value of inventories, the useful lives of long-lived assets, the useful lives of intangible assets, the potential impairment of goodwill, contingent consideration liabilities, income taxes, the fair value of certain financial instruments and the fair value of the net assets acquired in a business combination. Actual results could differ from these estimates.

*Adoption of the amendments to Section 3400, Revenue*

Effective July 1, 2022, the Company has adopted the amendments to Handbook Section 3400, Revenue ("Section 3400"), which provided additional guidance on:

- how to determine whether an arrangement consists of a group of contracts or a single contract and identifying the units of account in an arrangement;
- allocating consideration in multiple-element arrangements to separate units of account on a relative stand-alone selling price basis and methods for estimating the stand-alone selling price when it is not directly observable;
- accounting for revenue under the percentage of completion method; indicators to consider in determining whether revenue should be reported gross or net; criteria to use in determining when to recognize revenue for a bill and hold arrangement;
- determining when to recognize revenue for upfront non-refundable fees or payments (deferred to annual periods beginning on or after January 1, 2025); and
- disclosure requirements for contracts in progress at the end of the reporting period accounted for using the percentage of completion method.

The adoption of these amendments had no material impact on the amounts recognized in the Company's consolidated financial statements.

**Joriki Inc.****Notes to the consolidated financial statements**

June 30, 2023

**3. Other receivables**

The Company has an existing agreement with one customer in which the customer has agreed to pay for specific capital expenditures of the Company over time.

	2023 \$	2022 \$
Other receivable repayable in quarterly blended installment of US\$62,700	224,376	558,824
Less: current portion	224,376	321,024
	—	237,800

**4. Inventories**

As of June 30, inventory is comprised of:

	2023 \$	2022 \$
Ingredients and packaging	7,841,596	10,773,755
Finished goods	1,304,050	1,624,905
	9,145,646	12,398,660

The amount of inventory recognized as an expense during the year is \$91,519,684 (\$78,466,653 in 2022).

**5. US plant start-up costs**

US plant start-up costs include rent, wages, utilities, and other expenses incurred during the start-up of the US plant as described in Note 6.

**6. Property and equipment**

	Cost \$	Accumulated amortization \$	2023 Net book value \$	2022 Net book value \$
Construction in progress	107,393,701	—	107,393,701	47,746,513
Manufacturing and processing equipment	57,012,735	(13,935,404)	43,077,331	32,956,201
Office and laboratory equipment	105,848	(69,241)	36,607	57,776
Leasehold improvements	1,609,530	(279,173)	1,330,357	1,195,489
	166,121,814	(14,283,818)	151,837,996	107,541,651

During the year, the Company continued construction of a plant in the US state of Pennsylvania.

**Joriki Inc.****Notes to the consolidated financial statements**

June 30, 2023

**7. Intangible assets**

	<b>Cost</b>	<b>Accumulated amortization</b>	<b>2023 Net book value</b>	<b>2022 Net book value</b>
	\$	\$	\$	\$
Customer relationships	24,600,000	(9,534,000)	15,066,000	17,629,000
Trade name	2,730,000	(1,053,750)	1,676,250	1,959,250
Below market leases	520,000	(487,500)	32,500	162,500
Software	309,591	(108,562)	201,029	272,691
	<b>28,159,591</b>	<b>(11,183,812)</b>	<b>16,975,779</b>	<b>20,023,441</b>

**8. Accounts payable and accrued liabilities**

The major components of accounts payable and accrued liabilities are as follows:

	<b>2023</b>	<b>2022</b>
	\$	\$
Trade payables	15,898,032	16,751,238
Payroll and related accruals	11,302,772	6,030,310
	<b>27,200,804</b>	<b>22,781,548</b>

Included in accounts payable and accrued liabilities are government remittances payable of \$299,985 (\$115,231 in 2022).

**9. Finance costs**

The major components of finance costs are as follows:

	<b>2023</b>	<b>2022</b>
	\$	\$
Interest expense on term loan (Note 11)	9,108,631	2,264,791
Interest expense on related party promissory note (Note 12)	4,323,034	2,381,673
Amortization of deferred transaction & borrowing costs on term loan (Note 11)	228,148	186,401
	<b>13,659,813</b>	<b>4,832,865</b>

**10. Revolving credit facility**

The major components of the revolving credit facility are as follows:

	<b>2023</b>	<b>2022</b>
	\$	\$
Revolving credit facility (Note 11)	7,500,000	9,500,000



**Joriki Inc.****Notes to the consolidated financial statements**

June 30, 2023

**11. Long-term debt**

The major components of long-term debt are as follows:

	2023 \$	2022 \$
Term loan	18,000,000	18,000,000
Construction loan (US\$78,091,942)	103,393,731	41,235,200
Less: transaction & borrowing costs, net of accumulated amortization of \$533,497 (\$305,350 in 2022)	(776,766)	(917,128)
	120,616,965	58,318,072
Less: current portion of term loan	—	—
	120,616,965	58,318,072

On October 1, 2019, the Company entered into a credit agreement to secure an \$18 million term loan and a revolving credit facility of \$7.5 million, which bear interest at prime rate plus an applicable margin of 0.50% to 2.50% per annum or banker's acceptance ("BA") rate or CDOR rate plus an applicable margin of 1.50% – 3.50% per annum (Note 10).

The term loan is repayable on the last day of each fiscal quarter in each fiscal year in the principal amount of \$225,000 only if the Company does not meet the minimum covenant ratio. The term loan is repayable in full on September 20, 2026.

On September 20, 2021, the Company entered into an amended and restated credit agreement increasing the revolving credit facility described in Note 10 from \$7.5 million to \$15 million and establishing a non-revolving term loan facility in the amount of US\$65 million to fund capital expenditures and start-up costs related to the US plant build out to service executed long-term customer contracts (construction loan), as described in Note 5.

On January 27, 2023, the Company entered into an amended and restated credit agreement increasing the non-revolving term loan facility from US\$65 million to US\$78 million to fund capital expenditures and start-up costs related to US plant build out to service executed long-term customer contracts (construction loan), as described in Note 5.

Under the terms of the credit facilities, the Company must satisfy certain restrictive covenants as to minimum financial ratios. The Company was in compliance with the covenants as at June 30, 2023. Security for borrowing under the credit facilities includes a general security agreement on all present and future property, subject only for permitted encumbrance, and guarantees from the Company.

**12. Related party sub-debt**

On October 1, 2019, the Company issued a convertible promissory grid note payable amounting to \$23,594,594 to Joriki TopCo Inc., the Company's shareholder. The promissory note is unsecured, convertible to common shares at fair market value immediately prior to conversion, at the option of the holder, fully payable on October 1, 2026 and bears interest at a rate of 9.05%. The interest is accrued monthly and converts to principal amount every three years less a day.

On January 18, 2023, the Company issued a convertible promissory grid note payable amounting to \$17,500,000 to Joriki TopCo Inc., the Company's shareholder. The promissory note is unsecured, convertible to common shares at fair market value immediately prior to conversion, at the option of the holder, fully payable on March 20, 2027 and bears interest at a rate of 20.05%. The interest is accrued monthly and converts to principal amount every three years less a day.

**Joriki Inc.****Notes to the consolidated financial statements**

June 30, 2023

**12. Related party sub-debt (continued)**

During the year, the Company recorded interest expense related to the promissory note amounting to \$4,323,035 (\$2,381,673 in 2022) (Note 9), of which nil has been converted to principal (nil in 2022).

**13. Share capital***Authorized*

Unlimited number of common shares, one vote per share with discretionary dividend entitlement.

	<b>Number shares #</b>	<b>2023 Amount \$</b>	<b>Number shares #</b>	<b>2022 Amount \$</b>
Common shares				
Issued and outstanding	<b>28,882,073</b>	<b>29,572,073</b>	28,822,073	29,372,073

On October 1, 2019, the Company issued 28,822,073 common shares for a cash consideration of \$28,822,073 as part of the business acquisition. During 2023, the Company received additional capital contributions equal to \$200,000 (nil in 2022).

In 2022, the Company redeemed 202,217 class R shares for cash consideration of \$202,217 resulting in nil class R shares outstanding as of June 30, 2022. There were no Class R shares issued or redeemed in 2023.

**14. Long-term lease liability**

As of June 30, long-term lease liability is comprised of:

	<b>2023 \$</b>	<b>2022 \$</b>
Equipment lease, 9.20%, maturing in April 2033	<b>3,254,833</b>	—
Facility lease, straight-lined over 11 years maturing in April 2033, non-interest bearing	<b>1,804,138</b>	1,462,025
	<b>5,058,971</b>	1,462,025
Less: current portion of equipment lease	<b>(283,835)</b>	—
	<b>4,775,136</b>	1,462,025

During the year ended June 30, 2023, the Company acquired manufacturing and processing equipment from a customer for no monetary consideration. The Company has the right to use the equipment while title of the equipment is retained by the customer and is transferred to the Company after a 10-year period for no further consideration. As the Company obtains ownership of the equipment at the end of a 10-year period and the Company will receive substantially all of the economic benefits expected to be derived from the use of the equipment over its useful life of 10-15 years, the Company determined that the equipment acquired meets the definition of a capital lease. The Company recognized the equipment as a capital asset and a corresponding lease liability upon receipt of the equipment. The equipment was initially measured at the fair value of the equipment at the date of transfer of \$3,310,000 and will be depreciated to the end its useful life using the straight-line method. As at June 30, 2023, accumulated depreciation off \$55,456 has been recorded. As this is a non-monetary transaction, the lease liability represents future discounts provided to the customer over the useful life of the equipment. As at June 30, 2023, the carrying value of the lease liability is \$3,254,833 discounted at a rate of 9.2% and is expected to be fully extinguished in April, 2033.

**Joriki Inc.****Notes to the consolidated financial statements**

June 30, 2023

**15. Changes in non-cash operating working capital items**

	2023 \$	2022 \$
Accounts receivable	(1,243,234)	(5,076,453)
Inventories	3,253,014	(3,563,013)
Income tax receivable	569,414	1,046,265
Prepays and other assets	(55,040)	(794,343)
Accounts payable and accrued liabilities	4,419,256	6,686,199
	<u>6,943,410</u>	<u>(1,701,345)</u>

**16. Commitments**

Non-cancellable operating lease rentals are payable as follows:

	\$
2024	6,826,154
2025	6,406,449
2026	6,281,455
2027	6,426,708
2028	7,074,466
Thereafter	<u>24,835,871</u>
	<u>57,851,103</u>

**17. Related party transactions**

During the year, the Company was obligated under various operating leases with a shareholder for the lease of premises. Related party rent expense amounted to \$1,885,681 (\$1,731,620 in 2022) and is recorded in factory overhead in cost of sales.

During the year, the Company made no payments to shareholders for the redemption of shares as per the Shareholders Agreement (202,217 Class R shares redeemed for \$202,217 in 2022). These transactions were made in the normal course of business and have been recorded at the exchange amounts.

The amounts due from related parties are owing from Joriki Topco Inc., the parent company of Joriki Inc. and are unsecured and non-interest bearing with no terms of repayment.

**18. Significant customers**

During the year, 3 customers accounted for approximately 64% (61% in 2022) of revenue and 74% (71% in 2022) of accounts receivable at year-end.

**19. Risk management***Credit risk*

The Company is exposed to credit risk of non-payment of accounts receivable. The Company mitigates the risk by monitoring the credit worthiness of its customers. All of the Company's cash is held with reputable Canadian financial institutions, from which management believes risk of loss to be minimal.

**Joriki Inc.****Notes to the consolidated financial statements**

June 30, 2023

**19. Risk management (continued)***Interest rate risk*

The term loan and revolving credit facility bear interest at prime rate plus an applicable margin of 0.50% to 2.50% or banker's acceptance ("BA") rate or CDOR rate plus an applicable margin of 1.50% – 3.50% per annum. The Company is exposed to interest rate risk due to the floating rate nature of this instrument.

*Foreign exchange rate risk*

The Company is exposed to currency risk because some sales, purchases, assets, and liabilities are in U.S. Dollars. Foreign currency risk to the Company's earnings arise from the fluctuations in foreign exchange rates.

The following U.S. Dollar amounts, denominated in Canadian dollars below are included in these financial statements:

	<b>2023</b>	2022
	<b>\$</b>	\$
Cash	<b>689,958</b>	909,347
Accounts receivable	<b>1,386,589</b>	348,522
Other receivables	<b>224,376</b>	558,824
Accounts payable and accrued liabilities	<b>(13,644,541)</b>	(11,288,769)
Lease liability	<b>(5,058,971)</b>	(1,462,025)
Long-term debt	<b>(103,383,731)</b>	(41,235,200)

*(a) Foreign exchange contracts*

The Company utilizes foreign exchange options and forward contracts to manage foreign exchange risk from its underlying customer and purchase contracts. In particular, the Company uses foreign exchange options and forward contracts for the sole purpose of hedging a significant portion of projected currency inflows and outflows, which differ from the Company's functional currency. These consist primarily of U.S. dollar denominated contractual commitments to deliver products to the Company's customers or buy products from suppliers to the Company's operations in addition to other anticipated transactions expected to be settled in foreign currencies. The Company does not enter into foreign exchange forward contracts for speculative purposes.

As at June 30, 2023, the Company had outstanding foreign exchange options and forward contracts that include a commitment to sell approximately U.S. \$9 million, at weighted average rates of exchange of CAD\$1.33174 per U.S. \$1.00. These contracts mature and options expire over the next year.

The fair value of these foreign exchange options and forward contracts as at June 30, 2023 amounted to a net loss of \$417,635 (net gain of \$152,540 in 2022), which has been recorded in foreign exchange loss on the Consolidated statement of loss.

*Liquidity risk*

The Company's objective is to have sufficient liquidity to meet its liabilities when due. The Company monitors its cash balances and cash flows generated from operations to meet its requirements. As at June 30, 2023, the most significant financial liabilities are: the long-term debt, related party sub-debt and accounts payable and accrued liabilities.

**Joriki Inc.****Notes to the consolidated financial statements**

June 30, 2023

**20. Income taxes**

The income tax expense reported differs from the amount computed by applying the Canadian statutory rate to earnings before income taxes for the following reasons:

	<b>2023</b>	2022
	<b>\$</b>	\$
Loss before income taxes	<b>(26,809,338)</b>	(4,399,337)
Tax at the applicable tax rate of 28.38% (25% in 2022)	<b>(7,608,490)</b>	(1,099,834)
Items not deductible for income tax purposes	<b>571,006</b>	46,885
Timing differences	<b>1,918,394</b>	(1,382,626)
Non-capital loss carryforwards	<b>5,115,713</b>	1,970,381
Other	<b>3,377</b>	(4,742)
Income tax recovery	<b>—</b>	(469,936)

In 2023, the Company incurred a non-capital loss of \$18,028,551 (\$9,742,302 in 2022) and a net capital loss of nil (\$175,277 in 2022) for tax purposes. The Company has a non-capital loss balance of \$25,850,748 to be carried forward. Out of the non-capital loss balance, \$11,558,718 will expire starting in 2042, and \$14,292,030 will be carried forward with no expiry. The capital loss balance of \$175,277 is carried forward to future years with no expiry.

**21. Comparative figures**

Certain prior year comparative figures have been reclassified to conform to the current year's financial presentation.

**22. Subsequent Events**

On August 27, 2023, the Company entered into an amended and restated credit agreement to secure a \$15 million revolving credit facility.

On September 8, 2023, the Company entered into subordinate credit agreement to secure a \$15 million non-revolving loan facility to fund capital expenditures and start-up costs related to US plant build out to service executed long-term customer contracts (construction loan), as described in Note 5.

**Joriki Inc.****Schedule 1**

Year ended June 30, 2023

	Notes	2023 \$	2022 \$
<b>Material used</b>			
Material consumed	4	<b>91,519,684</b>	78,466,653
<b>Direct labour</b>			
Employee benefits		<b>2,613,800</b>	2,153,057
Salaries and wages		<b>20,965,931</b>	18,878,100
		<b>23,579,731</b>	21,031,157
<b>Factory overhead</b>			
Amortization of property and equipment		<b>4,768,719</b>	4,045,735
Indirect labour		<b>2,964,991</b>	2,200,051
Maintenance		<b>9,610,109</b>	6,479,064
Rent	17	<b>2,994,576</b>	2,275,878
Supplies		<b>7,254,633</b>	4,413,506
Utilities		<b>7,205,471</b>	6,471,309
		<b>34,798,499</b>	25,885,543
		<b>149,897,914</b>	125,383,353

**THIS IS EXHIBIT "G"**  
**TO THE AFFIDAVIT OF MICHAEL G. DEVON**  
**SWORN BEFORE ME OVER VIDEOCONFERENCE**  
**THIS 22<sup>nd</sup> DAY OF JANUARY, 2025**

*Madeline Cummings*  
\_\_\_\_\_  
Commissioner for Taking Affidavits

**Joriki Inc.**  
**Balance Sheet**  
**June 30, 2024**

	June 2024
Cash and Cash Equivalents	\$ 1,897,819
Trade Receivables	\$ 17,929,463
Other Receivable	\$ 1,061,315
Prepaid Expenses	\$ 361,664
Inventory	\$ 4,789,471
<b>Total Current Assets</b>	<b>\$ 26,039,732</b>
Due From/Due to Related Parties	\$ 183,739,162
Plant and Equipment	\$ 31,882,531
Equipment in Progress	\$ 1,182,967
Intangible Assets including Goodwill	\$ 27,498,560
Investment in Joriki USA	\$ 1
<b>Total Non-current Assets</b>	<b>\$ 244,303,220</b>
<b>Total Assets</b>	<b>\$ 270,342,952</b>
Accounts Payable	\$ 12,680,038
Accrued Liabilities	\$ 5,259,090
Deferred Revenue	\$ 328,640
<b>Total Current Liabilities</b>	<b>\$ 18,267,769</b>
Revolving Loan	\$ 29,800,000
Term Debt CAD	\$ 33,198,333
Term Debt USD	\$ 106,884,441
Syndicated Debt - Accrued Interest	\$ 2,638,261
Related Party Loan	\$ 31,590,816
<b>Total Non Current Liabilities</b>	<b>\$ 204,111,851</b>
<b>Total Liabilites</b>	<b>\$ 222,379,620</b>
Share Capital	\$ 84,341,450
Retained Earnings	\$ (15,732,743)
Current Earning	\$ (20,645,375)
<b>Total Owners Equity</b>	<b>\$ 47,963,332</b>
<b>Total Liabilites and Owners Equity</b>	<b>\$ 270,342,952</b>
Check	\$ -



**Joriki Inc.**  
**Group Profit and Loss**  
**June 30, 2024**

		June 2024
<b>Total Cases Sold</b>		2,051,612
<b>Total Cases Produced</b>		1,989,832
<b>Hours</b>		59,647
Gross Sales	\$	11,292,189
Sales Purchase Price Variance	\$	(97,751)
Sales Programs	\$	972,530
<b>Net Sales</b>	<b>\$</b>	<b>12,166,968</b>
Material Cost	\$	6,340,711
Salaries and Wages	\$	1,319,637
Temporary Labour	\$	128,893
Freight and Brokerage Expenses	\$	145,797
<b>Total Cost of Sales</b>	<b>\$</b>	<b>7,935,037</b>
<b>Gross Margin</b>	<b>\$</b>	<b>4,231,930</b>
<i>Gross Margin %</i>		37.5%
Salaries and Wages	\$	611,942
Utilites	\$	535,926
Rent	\$	245,652
Repairs and Maintenance	\$	504,823
Factory Supplies	\$	309,349
Lab Supplies	\$	57,986
Service Contracts	\$	141,746
Property Taxes	\$	42,850
General and Adminstrative	\$	240,127
Realized FX Gain/Loss	\$	(49,928)
<b>Total Operating Expenses</b>	<b>\$</b>	<b>2,640,473</b>
Adj: One-Time TMMC Leakers	\$	-
Adj.: TMMC FY2024 Toll Rate Accrual	\$	(833,551)
<b>EBITDA</b>	<b>\$</b>	<b>757,906</b>
Unrealized FX Gain/Loss	\$	(203,961)
Depreciation of Tangible Assets	\$	353,005
Amortization of Intangible Assets	\$	237,167
Interest	\$	1,313,168
One time	\$	-
Board of Directors	\$	20,833
Income Taxes		
<b>Net Income Loss</b>	<b>\$</b>	<b>(962,306)</b>

**THIS IS EXHIBIT “H”  
TO THE AFFIDAVIT OF MICHAEL G. DEVON  
SWORN BEFORE ME OVER VIDEOCONFERENCE  
THIS 22<sup>nd</sup> DAY OF JANUARY, 2025**

*Madeline Cummings*

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Commissioner for Taking Affidavits

	Balance Sheet
	December 2024
Cash and Cash Equivalents	\$ 1,935,893
Trade Receivables	\$ 8,206,020
Other Receivable	\$ -
Prepaid Expenses	\$ 300,735
Inventory	\$ 2,879,165
<b>Total Current Assets</b>	<b>\$ 13,321,813</b>
Due From/Due to Related Parties	\$ 215,180,756
Leased Assets	
Plant and Equipment	\$ 30,745,783
Equipment in Progress	\$ 1,747,937
Intangible Assets including Godwill	\$ 26,017,728
Investment in Joriki USA	\$ 1
<b>Total Non-current Assets</b>	<b>\$ 273,692,205</b>
<b>Total Assets</b>	<b>\$ 287,014,017</b>
Accounts Payable	\$ 11,821,381
Accrued Liabilities	\$ 50,108
Customer Rebate Accrual	\$ -
Deferred Revenue	\$ 193,992
<b>Total Current Liabilities</b>	<b>\$ 12,065,480</b>
Revolving Loan	\$ 29,800,000
Lease Liability Scotia	
Term Debt CAD	\$ 51,512,498
Term Debt USD	\$ 112,366,495
Syndicated Debt - Accrued Interest	\$ 10,339,615
Related Party Loan	\$ 44,646,107
Due From/Due to Related Parties	
Lease Liability	\$ -
<b>Total Non Current Liabilities</b>	<b>\$ 248,664,715</b>
<b>Total Liabilites</b>	<b>\$ 260,730,195</b>
Share Capital	\$ 84,341,450
Retained Earnings	\$ (37,163,326)
Contributed Surplus	\$ -
Dividend	\$ -
Current Earning	\$ (20,894,302)
<b>Total Owners Equity</b>	<b>\$ 26,283,822</b>
<b>Total Liabilites and Owners Equity</b>	<b>\$ 287,014,017</b>

Income Statement	MTD	YTD
MTD	December 2024	December 2024
Gross Sales	\$ 4,708,321	\$ 34,702,824
Sales Purchase Price Variance	\$ -	\$ (140,875)
Sales Programs	\$ 1,012,871	\$ (171,525)
<b>Net Sales</b>	<b>\$ 5,721,192</b>	<b>\$ 34,390,424</b>
Cost of Sales	\$ 1,397,547	\$ 8,857,922
Purchase Price Variance	\$ (748,993)	\$ (1,766,021)
Inventory writeoff	\$ (469,786)	\$ 6,463,463
Production Salaries & Wages	\$ 642,302	\$ 375,940
Temporary Labour	\$ 46,961	\$ 13,090,441
Freight and Brokerage Expenses	\$ 102,206	\$ 790,331
<b>Total Cost of Sales</b>	<b>\$ 970,237</b>	<b>\$ 27,812,076</b>
<b>Gross Margin</b>	<b>\$ 4,750,955</b>	<b>\$ 6,578,349</b>
Gross Margin %	83.0%	19.1%
Salaries and Wages	\$ (96,440)	\$ 2,874,753
Utilites	\$ (2,864)	\$ 1,833,622
Rent	\$ 350,134	\$ 1,450,809
Repairs and Maintenance	\$ 385,192	\$ 2,331,697
Factory Supplies	\$ 213,075	\$ 1,370,598
Lab Supplies	\$ 51,989	\$ 312,293
Service Contracts	\$ 64,592	\$ 584,602
Property Taxes	\$ 42,658	\$ 254,683
General and Adminstrative	\$ 1,765,063	\$ 4,426,571
<b>Total Operating Expenses</b>	<b>\$ 2,773,397</b>	<b>\$ 15,439,628</b>
One-time		
<b>EBITDA</b>	<b>\$ 1,977,559</b>	<b>\$ (8,861,279)</b>
Realized FX Gain/Loss	\$ (7,050)	\$ 212,952
Unrealized FX Gain/Loss	\$ (2,613,174)	\$ (4,887,283)
Depreciation of Tangible Assets	\$ 320,243	\$ 2,017,212
Amortization of Intangible Assets	\$ 237,167	\$ 1,423,000
Interest	\$ 1,984,418	\$ 11,079,111
One time	\$ 268,817	\$ 2,094,057
USA Project Construction Cost	\$ -	\$ -
Board of Directors	\$ -	\$ 93,974
Income Taxes	\$ -	\$ -
<b>Net Income (Loss)</b>	<b>\$ 1,787,139</b>	<b>\$ (20,894,302)</b>

**THIS IS EXHIBIT "I"**  
**TO THE AFFIDAVIT OF MICHAEL G. DEVON**  
**SWORN BEFORE ME OVER VIDEOCONFERENCE**  
**THIS 22<sup>nd</sup> DAY OF JANUARY, 2025**

*Madeline Cummings*

---

Commissioner for Taking Affidavits

**FOURTH AMENDMENT TO FOURTH AMENDED AND RESTATED  
CREDIT AGREEMENT**

**BETWEEN**

**JORIKI INC.  
as Borrower**

**AND**

**JORIKI USA INC. AND JORIKI TOPCO INC.  
collectively as Guarantor**

**AND**

**THE BANK OF NOVA SCOTIA  
as Administrative Agent, Bookrunner, Lead Arranger and Lead Hedge Arranger**

**AND**

**THE FINANCIAL INSTITUTIONS  
from time to time parties hereto,  
as Lenders**

**MADE AS OF  
DECEMBER 4, 2024**

**MCMILLAN LLP  
GOODMANS LLP**

#### **FOURTH AMENDMENT TO FOURTH AMENDED AND RESTATED CREDIT AGREEMENT**

THIS AGREEMENT is made effective as of DECEMBER 4, 2024 (this “**Fourth Amendment**”), between:

**JORIKI INC.**, a corporation existing under the laws of Ontario

(hereinafter referred to as the “**Borrower**”)

- and -

**JORIKI USA INC.**, a corporation existing under the laws of Delaware

- and -

**JORIKI TOPCO INC.**, a corporation existing under the laws of Ontario

(together with Joriki USA Inc. hereinafter referred to as the “**Guarantors**”, and together with the Borrower, the “**Obligors**”, and each an “**Obligor**”)

- and -

**THE BANK OF NOVA SCOTIA**, in its capacity as agent

(hereinafter referred to as the “**Agent**”)

- and -

**EACH FINANCIAL INSTITUTION** from time to time party to this agreement and shown as a lender on the signature pages hereto

(hereinafter in such capacities individually referred to as a “**Lender**” and collectively in such capacities referred to as the “**Lenders**”)

WHEREAS the Borrower, the Agent and the Lenders identified therein are parties to a fourth amended and restated credit agreement dated as of March 11, 2024, as amended by (i) a first amendment to the fourth amended and restated credit agreement dated as of September 23, 2024, (ii) a second amendment to the fourth amended and restated credit agreement dated as of November 12, 2024, and (iii) a third amendment to the fourth amended

and restated credit agreement dated as of November 19, 2024 (collectively, the “**Restated Credit Agreement**”);

AND WHEREAS the parties hereto wish to amend the Restated Credit Agreement in accordance with the terms hereof;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the covenants and agreements herein contained the parties hereto agree as follows:

## **SECTION 1 – INTERPRETATION**

### **1.1 Definitions**

Unless otherwise defined in this Fourth Amendment, capitalized terms used in this Fourth Amendment shall have the meanings given to them in the Restated Credit Agreement.

### **1.2 Incorporation into Credit Agreement**

The Restated Credit Agreement and this Fourth Amendment shall henceforth be read together and shall have the effect as if all the provisions of such agreements were contained in one instrument. This Fourth Amendment is a Loan Document.

### **1.3 Section Titles**

The Section titles contained in this Fourth Amendment are for convenience of reference only and are not to affect the construction or interpretation of this Fourth Amendment.

### **1.4 Interpretation**

Except as otherwise provided for herein, the rules of construction set forth in the Restated Credit Agreement shall govern the interpretation of this Fourth Amendment. References to Sections contained in the text of this Fourth Amendment, unless otherwise indicated, are references to Sections of the Restated Credit Agreement.

## **SECTION 2 – REPRESENTATIONS AND WARRANTIES**

### **2.1 Representations and Warranties**

Each Obligor, as applicable, makes the following representations and warranties to the Agent and to each of the Lenders as of the date of this Fourth Amendment and acknowledges and confirms that the Agent and each of the Lenders are relying upon such representations and warranties:

(a) the representations and warranties of the Obligor in the Restated Credit Agreement are true and correct on and as of the date hereof (unless stated to relate solely to an earlier date, in which case such representations and warranties were true and correct as of such earlier date). Notwithstanding the foregoing, where a representation in the Restated Credit Agreement references the “Fifth Closing Date”, such representation shall be made and shall be true and correct on and as of the date hereof;

(b) the execution, delivery and performance by each Obligor of this Fourth Amendment (i) is within its powers; (ii) has been duly authorized by all necessary or proper partnership, corporate or other action; (iii) is not in contravention of any provision of its constating documents; (iv) will not violate any Applicable Law; (v) do not, and will not, conflict with or result in the breach or termination of, constitute a default under, or accelerate any performance required by, (i) any Material Contract to which it is a party or by which it is bound, or (ii) any of the [REDACTED] Contract, the [REDACTED] Contract, the [REDACTED] Contract and the [REDACTED] Contract; (vi) will not result in the creation or imposition of any Encumbrance upon any of its property or assets; and (vii) do not require the consent or approval of any Governmental Authority or any other Person; and

(c) this Fourth Amendment has been duly executed and delivered by each Obligor and constitutes a legal, valid and binding obligation of the Obligor, enforceable against the Obligor in accordance with its terms, subject to bankruptcy, insolvency, moratorium laws or similar laws affecting creditors rights generally.

### SECTION 3 – EVENT OF DEFAULT

#### 3.1 Acknowledgment of Event of Default

The Borrower acknowledges and confirms that (a) an Event of Default has occurred and is continuing pursuant to Section 12.1(xvii) of the Restated Credit Agreement by virtue of a Material Adverse Effect with respect to the business, operations, properties, assets and condition (financial or otherwise) of the Borrower (the “**MAC Default**”), and (b) the Borrower was unable to deliver to the Agent annual audited consolidated financial statements of the Borrower including, in each case and without limitation, balance sheet, statement of income and statement of cash flows required pursuant to section 10.3(a) of the Restated Credit Agreement within 120 days of the end of the Borrower’s Fiscal Year, as required by said section (the “**FS Default**”, together with the MAC Default, collectively, the “**Specified Default**”) the Agent and the Lenders may pursue the remedies available to them as a result of such Specified Default pursuant to the Restated Credit Agreement; provided that nothing herein shall be construed as a consent to any enforcement action by the Agent or the Lenders.

Notwithstanding the Specified Default and subject to satisfying the conditions in Section 5.1 of this Fourth Amendment, the Facility C Lenders shall make available Advances under the Revolving C Facility in accordance with the terms of the Restated Credit Agreement, as amended.

#### 3.2 Reservation of Rights

(a) The Agent and Lenders hereby expressly reserve, without limitation, all of their rights, remedies and privileges under the Restated Credit Agreement in connection with the Specified Default or any other Events of Default, now existing or hereafter arising under or in connection with the Restated Credit Agreement or any other Loan Document, whether known or unknown.

(b) Nothing contained herein, including the execution and delivery of this Fourth Amendment, nor any decision by the Agent and the Lenders to continue to make Advances available under the Restated Credit Agreement, or any other action or omission to act on the part of the Agent and the Lenders, with or without agreement, should be construed as a waiver of any rights, remedies or privileges of the Agent and the Lenders under the Restated Credit Agreement, the other Loan Documents or Applicable Law, or an acquiescence by the Agent and the Lenders to the Specified



Default or any other Event of Default, all of which rights, remedies and privileges are hereby reserved.

## **SECTION 4 – AMENDMENTS**

### **4.1 Amendments to Restated Credit Agreement**

Subject to the conditions and upon the terms set forth in this Amendment, and in reliance on the representations and warranties of the Borrower set forth in this Amendment, effective as of the date hereof, the Restated Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in Exhibit A attached hereto.

## **SECTION 5 – CONDITIONS TO EFFECTIVENESS**

### **5.1 Conditions to Effectiveness**

The effectiveness of this Fourth Amendment is subject to, and conditional upon, the following conditions having been satisfied or provided for in a manner satisfactory to the Lenders:

- (a) the execution and delivery of this Fourth Amendment by the parties hereto;
- (b) payment by the Borrower to the Agent, Lender, FTI Consulting Canada Inc., the Agent's or Lender's legal counsel and/or any other service provider engaged by the Agent in relation to this Fourth Amendment or matters relating to the Borrower, as applicable, of any and all reasonable and documented fees, expenses, disbursements, costs, taxes or other amounts whatsoever incurred by the Agent or Lender. The parties agree that such amounts shall be funded from the next Advance under the Revolving C Facility and that this condition shall be deemed satisfied upon execution of this Fourth Amendment;
- (c) the Agent shall have received certified copies of the resolutions authorizing the execution, delivery and performance of the Borrower's obligations under this Fourth Amendment and the transactions contemplated herein, and the incumbency of the officers and directors of the Borrower;
- (d) a currently dated letter of opinion of the Borrower's Counsel satisfactory to Lenders' Counsel shall have been delivered to the Agent;
- (e) certificates of status or good standing, as applicable, for the Obligor's jurisdiction of existence shall have been delivered to the Agent;
- (f) receipt by the Agent of an acknowledgement and confirmation from each guarantor hereunder;
- (g) a Compliance Certificate calculated as of December 4, 2024 shall have been delivered to the Agent;
- (h) the Agent shall have received such additional and customary documents as the Lenders shall reasonably request to establish the consummation of the transactions contemplated hereby

and in the Restated Credit Agreement and be satisfied, acting reasonably, as to the taking of all proceedings in connection herewith in compliance with the conditions set forth in this Fourth Amendment and the Restated Credit Agreement.

## **SECTION 6 – REAFFIRMATION; RELEASE**

### **6.1 Reaffirmation; Release**

By signing this Fourth Amendment:

(a) Each Obligor affirms that the representations and warranties in each of the existing loan and security documents previously executed and delivered pursuant to the Restated Credit Agreement (the “**Loan Documents**”) are true and correct in all material respects as of the date hereof (except that such representations and warranties that speak as of a specified date or period of time shall be true and correct in all material respects only as of such date or period of time), and agrees that (i) except as amended previously or in connection herewith, each Loan Document is valid and enforceable in accordance with its terms (except as may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or similar laws relating to or limiting creditors’ rights generally or by equitable principles) and (ii) such Obligor has no claims, defenses, setoffs, counterclaims or claims for recoupment against the Agent, the Lenders, the Indemnified Persons (as defined below) or the indebtedness and obligations represented by the Loan Documents.

(b) Each Obligor hereby releases, acquits, and forever discharges the Agent, each Lender, their respective parent corporations, affiliates, subsidiaries, successors, assigns, officers, directors, employees, agents, attorneys and advisors (collectively, “**Indemnified Persons**”), and each of them, of and from any and all liability, claims, demands, damages, actions, causes of action, defenses, counterclaims, setoffs, or claims for recoupment of whatsoever nature, whether known or unknown, from the beginning of time to the date of this Fourth Amendment, whether in contract or tort or otherwise, arising directly or indirectly from, or in any way related to the Restated Credit Agreement, this Fourth Amendment and the other Loan Documents, any other indebtedness or obligations of any Obligor to the Agent or any one or more of the Lenders or to the relationship between any Obligor and the Agent, any Lender, or the Indemnified Persons.

(c) This Fourth Amendment is not a novation of the Restated Credit Agreement or of any credit facility or guarantee provided thereunder or in respect thereof. Notwithstanding that the cover page of the Restated Credit Agreement is dated “as of March 11, 2024” and the Restated Credit Agreement contains conditions which were applicable to the prior closing date, the changes to the Restated Credit Agreement effected by this Fourth Amendment shall be effective as of the satisfaction to the conditions effectiveness set forth in Section 5 of this Fourth Amendment.

## **SECTION 7 – GENERAL**

### **7.1 Fees and Expenses**

The Borrower shall pay to the Agent and any Lender all reasonable legal fees and expenses of the Agent’s incurred in connection with the preparation of this Fourth Amendment and the implementation hereof.

## **7.2 Severability**

Any provision of this Fourth Amendment which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

## **7.3 Benefit of the Agreement**

This Fourth Amendment shall enure to the benefit of and be binding upon the Borrower, the Lenders, the Agent and their respective permitted successors and permitted assigns.

## **7.4 Further Assurances**

The Borrower, each Lender and the Agent shall promptly cure any default by it in the execution and delivery of this Fourth Amendment, the Loan Documents or of any of the agreements provided for hereunder to which it is a party. The Borrower, at its expense, shall promptly execute and deliver to the Agent, upon reasonable request by the Agent, all such other and further documents, agreements, opinions, certificates and instruments in compliance with and required to give effect to the covenants and agreements of the Borrower hereunder or to make any recording, file any notice or obtain any consent contemplated herein.

## **7.5 Survival**

The representations and warranties of the Borrower in this Fourth Amendment shall survive the execution, delivery and acceptance hereof by the parties hereto and the closing of the transactions described herein or related hereto.

## **7.6 Governing Law**

This Fourth Amendment shall be governed by the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario.

## **7.7 Counterparts**

This Fourth Amendment may be executed or executed electronically in multiple counterparts, each of which shall be deemed to be an original agreement and all of which shall constitute one agreement. All counterparts shall be construed together and shall constitute one and the same agreement. This Fourth Amendment, to the extent signed or signed electronically and delivered by means of electronic transmission (including, without limitation, facsimile and Internet transmissions), shall be treated in all manner and respects as an original agreement and should be considered to have the same binding legal effect as if it were the original version thereof delivered in person.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF the parties hereto have executed this Fourth Amendment.


**BORROWER:**

**Address:**

c/o TorQuest Partners  
Brookfield Place  
161 Bay St, Suite 4240  
Toronto, ON M5J 2S1

Attention: Michael Salisbury  
Facsimile: (416) 956-7001

**JORIKI INC.**

by   
Name: Michael Devon  
Title: Chief Financial Officer

with a copy to:

Goodmans LLP  
333 Bay Street 34th Floor  
Toronto, ON M5H 2S7

Attention: David Nadler and  
Christopher Armstrong  
Facsimile: (416) 979-1234


**GUARANTORS:**

**Address:**

c/o TorQuest Partners  
 Brookfield Place  
 161 Bay St, Suite 4240  
 Toronto, ON M5J 2S1

Attention: Michael Salisbury  
 Facsimile: (416) 956-7001

**JORIKI USA INC.**

by   
 Name: Michael Devon  
 Title: Chief Financial Officer

with a copy to:

Goodmans LLP  
 333 Bay Street 34th Floor  
 Toronto, ON M5H 2S7


Attention: David Nadler and  
 Christopher Armstrong  
 Facsimile: (416) 979-1234

**Address:**

c/o TorQuest Partners  
 Brookfield Place  
 161 Bay St, Suite 4240  
 Toronto, ON M5J 2S1

Attention: Michael Salisbury  
 Facsimile: (416) 956-7001

**JORIKI TOPCO INC.**

by   
 Name: Michael Devon  
 Title: Chief Financial Officer

with a copy to:

Goodmans LLP  
 333 Bay Street 34th Floor  
 Toronto, ON M5H 2S7

Attention: David Nadler and  
 Christopher Armstrong  
 Facsimile: (416) 979-1234

**Address:**

The Bank of Nova Scotia  
Global Loan Syndication – Agency Services  
40 Temperance Street, 6th Floor  
Toronto, ON M5H 0B4

Attention: Head of Agency Services  
Email: agency.services@scotiabank.com

**THE BANK OF NOVA SCOTIA, as  
Agent**

by



Name: Jim Cook

Title: Senior Manager



Name: Ostap Pentsak

Title: Associate Director

in the case of any Lender or the Agent, with a  
copy to:

McMillan LLP  
Brookfield Place, 181 Bay Street, Suite 4400  
Toronto, Ontario M5J 2T3

Attention: Wael Rostom  
Facsimile: wael.rostom@mcmillan.ca

**Address:**

The Bank of Nova Scotia  
40 King Street West  
Scotia Plaza, 13<sup>th</sup> Floor  
Toronto, ON M5W 2X6

Attention: Rocco Fabiano and Justin Mitges  
Facsimile: rocco.fabiano@scotiabank.com  
justinl.mitges@scotiabank.com

**THE BANK OF NOVA SCOTIA, as a  
Lender**

by



Name: Jim Cook

Title: Senior Manager



Name: Ostap Pentsak

Title: Associate Director


**Address:**

The Toronto-Dominion Bank  
66 Wellington Street West, 12<sup>th</sup> Floor  
Toronto, ON M5K1A2

Attention: Michael Vos and Xiaoyu Jia  
Facsimile: [Michael.vos@td.com](mailto:Michael.vos@td.com)  
[Xiaoyu.jia@td.com](mailto:Xiaoyu.jia@td.com)

**THE TORONTO-DOMINION BANK, as a  
Lender**

by   
\_\_\_\_\_  
Name: Xiaoyu Jia  
Title: Associate Director, Financial Restructuring Group

  
\_\_\_\_\_  
Name: Michael Vos  
Title: Vice President Financial Restructuring Group



**EXHIBIT A**

*See attached.*

**FOURTH AMENDED AND RESTATED CREDIT AGREEMENT**

**BETWEEN**

**JORIKI INC.  
as Borrower**

**AND**

**THE BANK OF NOVA SCOTIA  
as Administrative Agent, Bookrunner, Lead Arranger and Lead Hedge Arranger**

**AND**

**THE FINANCIAL INSTITUTIONS  
from time to time parties hereto,  
as Lenders**

**MADE AS OF  
March 11, 2024**

**McMILLAN LLP**

**GOODMANS LLP**

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#### **FOURTH AMENDED AND RESTATED CREDIT AGREEMENT**

THIS AGREEMENT is made as of March 11, 2024.

B E T W E E N:

**JORIKI INC.**, a corporation existing under the laws of Ontario

(hereinafter referred to as the “**Borrower**”)

- and -

**THE BANK OF NOVA SCOTIA**, in its capacity as agent

(hereinafter referred to as the “**Agent**”)

- and -

**EACH FINANCIAL INSTITUTION** from time to time party to this agreement and shown as a lender on the signature pages hereto

(hereinafter in such capacities individually referred to as a “**Lender**” and collectively in such capacities referred to as the “**Lenders**”)

WHEREAS the Borrower, the Agent and the Lenders identified therein are parties to a third amended and restated credit agreement dated as of August 31, 2023 (the “**Restated Credit Agreement**”);

AND WHEREAS the parties hereto wish to amend and restate the Restated Credit Agreement in accordance with the terms hereof;

AND WHEREAS The Bank of Nova Scotia will continue to be the Agent as contemplated by Section 14.1;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the covenants and agreements herein contained the parties hereto agree as follows:



## ARTICLE 1

### INTERPRETATION

#### 1.1 Definitions

In this Agreement unless something in the subject matter or context is inconsistent therewith:

**“Acquisition”** shall mean, with respect to any Person, any purchase or other acquisition, regardless of how accomplished or effected (including any such purchase or other acquisition effected by way of amalgamation, merger, arrangement, business combination or other form of corporate reorganization or by way of purchase, lease or other acquisition arrangements), of (a) any other Person (including any purchase or acquisition of such number of the issued and outstanding securities of, or such portion of an Equity Interest in, such other Person) such that such other Person becomes a Subsidiary of the purchaser or of any of its Affiliates, (b) all or substantially all of the Property of any other Person, or (c) all or any material portion of all of any division, business, or operation or undertaking of any other Person as a going concern.

**“Adjusted Daily Compounded CORRA”** means, for purposes of any calculation, the rate per annum equal to (a) Daily Compounded CORRA for such calculation, plus (b) the Daily Compounded CORRA Adjustment; provided that if Adjusted Daily Compounded CORRA as so determined shall be less than the Floor, then Adjusted Daily Compounded CORRA shall be deemed to be the Floor.

**“Adjusted Term CORRA”** means, for purposes of any calculation, the rate per annum equal to (a) Term CORRA for such calculation, plus (b) the Term CORRA Adjustment; provided that if Adjusted Term CORRA as so determined shall ever be less than the Floor, then Adjusted Term CORRA shall be deemed to be the Floor.

**“Adjusted Term SOFR”** mean with respect to any tenor, the per annum rate equal to the sum of (i) Term SOFR plus (ii) of 0.10% (10 basis points) for one-month, 0.15% (15 basis points) for three months, and 0.25% (25 basis points) for six-months provided that if Adjusted Term SOFR shall be less than the Floor, Adjusted Term SOFR shall be deemed to be the Floor.

**“Administrative Questionnaire”** means an administrative questionnaire in a form supplied by the Agent.

**“Advance”** means a borrowing by the Borrower by way of a Prime Rate Advance, a US Base Rate Advance, a SOFR Advance, Term CORRA Advances, Daily Compounded CORRA Advances or the issuance of a Letter of Credit by the Issuing Lender, and any reference relating to the amount of Advances shall mean the sum of the principal amount of all outstanding Prime Rate Advances, Term CORRA Advances, Daily Compounded CORRA Advances, US Base Rate Advances and SOFR Advances, whether as a result of a Drawdown, Conversion, Rollover or deemed advance plus the maximum amount payable under Letters of Credit.

**“Affiliate”** means, with respect to a specified Person, another Person that directly or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

**“Agent”** means BNS in its capacity as administrative agent for the Lenders, including any successor agent pursuant to Section 14.7.

**“Agent’s Payment Branch”** means (i) for purposes of obtaining and repaying Advances under the Swingline Facility, The Bank of Nova Scotia, the Business Support Centre, 40 King Street West, Toronto, Ontario, M5W 2X6 and, (ii) for all other purposes, means Global Wholesale Services - Loan Operations of the Agent located at The Bank of Nova Scotia, 720 King Street West, 2<sup>nd</sup> Floor, Wholesale Banking Operations, Toronto, Ontario, M5V 2T3, or such other branch or branches as may be designated by the Agent from time to time.

**“Aggregate Revolving Commitment”** means the aggregate Commitments of the Lenders under the Revolving Facility as may be reduced in accordance with Section 2.10 from time to time.

**“Aggregate Revolving B Commitment”** means the aggregate Commitments of the Lenders under the Revolving B Facility as may be reduced in accordance with Section 2.10 from time to time.

**“Aggregate Revolving C Commitment”** means the aggregate Commitments of the Lenders under the Revolving C Facility as may be reduced in accordance with Section 2.10 from time to time.

**“Aggregate Revolving D Commitment”** means the aggregate Commitments of ~~BNS~~the Lenders under the Revolving D Facility as may be reduced in accordance with Section 2.10 from time to time.

**“Agreement”** means this fourth amended and restated credit agreement, the schedules and all amendments made hereto in accordance with the provisions hereof, as amended, revised, replaced, supplemented or restated from time to time.

**“Amalco”** means Joriki Inc., the entity resulting from the Amalgamation.

**“Amalgamation”** means the amalgamation of the Borrower and Joriki pursuant to articles of arrangement on the Closing Date with the entity resulting from such amalgamation being Amalco.

**“Annual Business Plan”** means the annual business plan of the Borrower, prepared on a consolidated basis, with detailed financial projections and budgets on a month to month basis for the following Fiscal Year, in each case consisting of a balance sheet, statement of income, statement of cash flows and proposed Capital Expenditures which shall include management discussions and analysis.

**“Anti-Corruption Laws”** has the meaning set forth in Section 9.1(ii).

**“Anti-Terrorism Law”** means any Applicable Laws relating to terrorism or terrorism financing, including Executive Order No. 13224, the laws administered by the OFAC, the

*Criminal Code (Canada), the United Nations Act (Canada) and the Special Economic Measures Act (Canada).*

**“Applicable Law”** means (a) any domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, rule, regulation, restriction or by-law (zoning or otherwise); (b) any judgment, order, writ, injunction, decision, ruling, decree or award; (c) any regulatory policy, practice, request, guideline or directive; or (d) any franchise, licence, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Governmental Authority, binding on or affecting the Person referred to in the context in which the term is used or binding on or affecting the property of such Person, in each case having the force of law.

**“Applicable Margin”** means, with respect to any Advance and the standby fees, from one Pricing Date to the next, the rates per annum determined in accordance with the provisions set forth below. For purposes hereof, the term **“Pricing Date”** means, for any Fiscal Quarter of the Borrower ending on or after the Closing Date, the first (1st) Business Day after the latest date on which the Borrower is required to deliver to the Agent the financial statements and Compliance Certificate for such Fiscal Quarter pursuant to Section 10.3 hereof. The Applicable Margin shall be established on a Pricing Date based on the Total Debt to EBITDA Ratio as of the end of the most recently completed Fiscal Quarter or Fiscal Year, as applicable, and the Applicable Margin established on a Pricing Date shall remain in effect until the next Pricing Date. If the Borrower has not delivered its financial statements and Compliance Certificate by the date such financial statements and Compliance Certificate are required to be delivered under Section 10.3 hereof, until such financial statements and Compliance Certificate are delivered, the Applicable Margin shall, on the first (1st) day after the latest date by which the Borrower was so required to provide such financial statements and Compliance Certificate, be set at the highest Applicable Margin (i.e., Level I shall apply). Each determination of the Applicable Margin made by the Agent in accordance with the foregoing shall be conclusive and binding on the Borrower and the Lenders if reasonably determined. For greater certainty, there shall be no adjustments to the Applicable Margin in respect of Term CORRA Advances, Daily Compounded CORRA Advances and SOFR Advances that are outstanding on a Pricing Date.

(a)

Level	Total Debt to EBITDA Ratio	Term CORRA Margin, Daily Compounded CORRA Margin, SOFR Margin and Letter of Credit Fee Rate	Prime Rate Margin and US Base Rate Margin	Standby Fee Rate
Level I	>4.00:1.0	4.00%	3.00%	0.80%
Level II	>3.25:1.0 but less than or equal to 4.00:1.0	3.00%	2.00%	0.60%
Level III	>2.25:1.0 but less than or equal to 3.25:1.0	2.00%	1.00%	0.40%
Level IV	Less than or equal to	1.50%	0.50%	0.30%

Level	Total Debt to EBITDA Ratio	Term CORRA Margin, Daily Compounded CORRA Margin, SOFR Margin and Letter of Credit Fee Rate	Prime Rate Margin and US Base Rate Margin	Standby Fee Rate
	2.25:1.0			

- (b) As of the Fifth Closing Date, the Applicable Margin is at Level I.
- (c) Upon the occurrence of, and during the continuance of, an Event of Default, the Applicable Margin shall, on written notice by the Agent to the Borrower, be at the then applicable Level, plus 2.00% per annum.
- (d) With respect to any Advance under the Revolving C Facility, the Applicable Margin at the then applicable level plus 300 basis points and paid in accordance with the terms of this Agreement.
- (e) With respect to any Advance under the Revolving D Facility, the Applicable Margin at the then applicable level plus 300 basis points and paid in accordance with the terms of this Agreement.

In determining the Total Debt to EBITDA Ratio for the purpose of the Applicable Margin, Unrestricted Cash will not be deducted in determining Total Debt.

**“Applicable Order”** means any applicable domestic or foreign order, judgment, award or decree made by any court or Governmental Authority.

**“Arm’s Length”** has the meaning specified in the definition of **“Non-Arm’s Length”**.

**“Assignment and Assumption”** means an assignment and assumption entered into by a Lender and an Eligible Assignee and accepted by the Agent, in substantially the form of Schedule F or any other form approved by the Agent.

**“Auditor”** means the Borrower’s auditor, being one of PricewaterhouseCoopers LLP, Ernst & Young LLP, Deloitte & Touche LLP, or KPMG LLP, and includes its successors and any replacement auditor from time to time.

**“Available Tenor”** means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an Interest Period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.14(d).

**“Basel III”** means (i) the agreements on capital requirements, leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient

banks and banking systems”, “Basel III: International framework for liquidity risk measurement standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated; and (ii) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”.

**“Benchmark”** means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.14(a).

**“Benchmark Replacement”** means, the first alternative set forth in the order below that can be determined by the Agent for the applicable Benchmark Replacement Date,

- (a) the sum of Daily Simple SOFR plus (ii) of 0.10% (10 basis points) for one-month, 0.15% (15 basis points) for three months, and 0.25% (25 basis points) for six-months; or
- (b) the sum of: (i) the alternate benchmark rate that has been selected by the Agent and the Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for US Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

**“Benchmark Replacement Adjustment”** means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for US Dollar-denominated syndicated credit facilities.

**“Benchmark Replacement Date”** means the earliest to occur of the following events with respect to the then-current Benchmark:

- (a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event”, the later of (i) the date of the public statement or publication of information

referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

- (b) in the case of clause (c) of the definition of “Benchmark Transition Event”, the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) above with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

**“Benchmark Transition Event”** means the occurrence of one or more of the following events with respect to the then-current Benchmark:

- (a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);
- (b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or
- (c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that all Available Tenors of such Benchmark (or the published component used in the calculation thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Unavailability Period**” means the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14, and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14.

“**BHC Act Affiliate**” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“**BNS**” means The Bank of Nova Scotia.

“**Borrower**” means Joriki Inc., an Ontario corporation, including its successors and assigns.

“**Borrower’s Counsel**” means the firm of Goodmans LLP or such other firm or firms of legal counsel as the Borrower may from time to time designate.

“**Breakage Costs**” means all reasonable costs, losses and expenses incurred by any Lender by reason of the liquidation or deployment of deposits or other funds, the breakage of SOFR or CORRA contracts, all as set out in a certificate delivered to the Borrower by any Lender entitled to receive such reimbursement.

“**Business**” means the business of manufacturing and packaging juices, other beverages and food products on behalf of several major brands and retailers across North America.

“**Business Day**” means (i) in respect of a SOFR Advance or any other calculation or determination involving SOFR, any day of the year, other than a Saturday, Sunday or other day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities, and (ii) for all other purposes of this Agreement, any day other than a Saturday or a Sunday on which banks generally are open for business in Toronto, Ontario and Vancouver, British Columbia.

“**Contract**” means the contract to be entered into between one or more of the Obligors and [REDACTED] (or its affiliate).

“**Canadian Dollars**”, “**Cdn. Dollars**”, “**Cdn.\$**” and “**\$**” means the lawful money of Canada.

“**Canadian EBITDA**” means EBITDA as calculated for the Canadian operations of the Borrower only, which for certainty would exclude any financial impact of the US Facility.

“**Canadian Pension Plan**” means any “pension plan” that is subject to the funding requirements of the *Pension Benefits Act* (Ontario) or applicable pension benefits

legislation in any other Canadian jurisdiction and is applicable to employees resident in Canada of an Obligor.

**“Canadian Welfare Plan”** means any medical, health, hospitalization, insurance or other employee benefit or welfare plan or arrangement applicable to employees resident in Canada of an Obligor.

**“Capital Expenditures”** means, for any period, any expenditure made by any Person for the purchase, lease, license, acquisition, erection, development, improvement or construction of capital assets, including any such expenditure financed by way of a Capital Lease or any other expenditure required to be capitalized, all as determined on a consolidated basis in accordance with GAAP.

**“Capital Lease”** means, with respect to any Person, any lease of (or other agreement conveying the right to use) any real or personal property by such Person that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

**“Cash Equivalents”** means (i) short-term obligations of, or fully guaranteed by, the government of the United States of America or Canada, (ii) short-term obligations of, or fully guaranteed by, the government of a State of the United States of America or of a Province of Canada, in each case having a rating of “A-” (or the then equivalent grade) or better by a nationally recognized rating agency, (iii) commercial paper having a rating of “A-” (or then equivalent grade) or better by S&P or Moody’s, (iv) demand or current deposit accounts maintained in the ordinary course of business with the Agent or any Lender or any Affiliate thereof, (v) certificates of deposit issued by and time deposits with any Schedule I Canadian chartered bank or any other commercial bank or trust company (whether domestic or foreign) having capital and surplus in excess of \$500,000,000 and a senior unsecured rating of “A-” or better by S&P or Moody’s, (vi) money market funds that invest substantially all of their assets in any of the foregoing; provided in each case that the same has a term not exceeding (A) one year in the case of (i) and (ii) above, and (B) three-hundred and sixty-five (365) days in the case of (iii) through (vi) above.

**“Cash Flow Forecast”** means, at any time, a weekly Net Cash Flow forecast for Borrower and its Subsidiaries on a consolidated basis prepared bi-weekly, with respect to the next 13 weeks, such forecast to be in form and substance satisfactory to the Agent.

**“Cash Flow Report”** means, with respect to any weekly period, an itemized report on Net Cash Flow with respect to such weekly period comparing the Borrower’s actual performance to that projected in the Initial Cash Flow Forecast or Cash Flow Forecast, as applicable, for such weekly period (including receipts and disbursements and detailing any negative and positive variance in excess of the greater of 10% of a line item and \$100,000 in respect of each line item of the Initial Cash Flow Forecast or Cash Flow Forecast, as applicable, for such weekly period and the reasons therefor) and the cash balance at the end of such weekly period, and otherwise to be in form and substance satisfactory to the Agent.

**“[REDACTED]”** means [REDACTED].



"**Contract**" means the contract dated as of July 7, 2021 between the Borrower and [REDACTED].

"**PET Line #1**" means the line identified as such in Exhibit I.

"**PET Line #2**" means the line identified as such in Exhibit I.

"**PET Line #3**" means the line identified as such in Exhibit I.

"**Carton Line #4**" means the line identified as such in Exhibit I.

"**Carton Line #5**" means the line identified as such in Exhibit I.

"**CERCLA**" means the *Comprehensive Environmental Response, Compensation and Liability Act of 1980*, as amended by the *Superfund Amendments and Reauthorization Act of 1986*, 42 U.S.C. §§9601 et seq., and any future amendment.

"**Change in Law**" means the occurrence, after the date of this Agreement, of any of the following: (a) the phase-in, adoption or taking effect of any Applicable Law, (b) any change in any Applicable Law or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any Applicable Law by any Governmental Authority.

"**Change of Control**" means either (a) the failure of TorQuest and its Affiliates to collectively have the right to nominate or appoint a majority of the directors to the board of directors of the Borrower, or (b) the failure of TorQuest and its Affiliates to legally and beneficially own directly or indirectly, no less than 50.1% of the economic interest of the Borrower at any time.

"**Closing Date**" means October 1, 2019 or such later date as may be agreed to by the parties hereto.

"**Commitment**" means, in respect of each Lender from time to time, the maximum amount of Advances which such Lender has covenanted to make as set forth in Schedule A to this Agreement (which may be amended and distributed to all parties by the Agent from time to time), which for greater certainty shall in each case be reduced by such Lender's Proportionate Share of the amount of any permanent repayments, reductions or prepayments made hereunder.

"**Commodity Exchange Act**" means the *Commodity Exchange Act* (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"**Compliance Certificate**" means the certificate required pursuant to Section 10.3(e), substantially in the form annexed as Schedule D and signed by a senior officer of the Borrower.

"**Conforming Changes**" means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Business Day," the definition of "Interest Period," the definition of "US Government Securities Business Day", the timing and frequency of determining rates and making payments of interest, the timing of borrowing requests or prepayment,

conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

**“Contingent Obligation”** means, as to any Person, any obligation, whether secured or unsecured, of such Person guaranteeing or indemnifying, or in effect guaranteeing or indemnifying, any Debt (the **“primary obligations”**) of any other Person (the **“primary obligor”**) in any manner, whether directly or indirectly, including any obligation of such Person as an account party in respect of a letter of credit or letter of guarantee issued to assure payment by the primary obligor of any such primary obligation and any obligations of such Person, whether or not contingent, (a) to purchase any such primary obligation or any Property constituting direct or indirect security therefor, (b) to advance or supply funds for the purchase or payment of any such primary obligation or to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase Property, securities or services primarily for the purpose of assuring the obligee under any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (d) otherwise to assure or hold harmless the obligee under such primary obligation against loss in respect of such primary obligation; provided, however, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business and customary indemnities provided in agreements executed and delivered in respect of Acquisitions or Dispositions.

**“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have corresponding meanings.

**“Controlled Group”** in respect of any Obligor operating in the United States, means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with such Obligor or any of its Subsidiaries, are treated as a single employer under Section 414 of the IRC.

**“Conversion”** means a conversion of an Advance pursuant to Section 2.6(a).

**“Conversion Date”** means the date specified by the Borrower as being the date on which the Borrower has elected to convert one type of Advance into another type of Advance and which shall be a Business Day.

**“Conversion Notice”** means the notice of request for Conversion substantially in the form annexed hereto as Schedule B to be given to the Agent by the Borrower pursuant to Section 2.6.

**"CORRA"** means the Canadian Overnight Repo Rate Average administered and published by the Bank of Canada (or any successor administrator).

**"CORRA Advances"** means Term CORRA Advances and Daily Compounded CORRA Advances.

**"CORRA Available Tenor"** means, as of any date of determination and with respect to the then current CORRA Benchmark, as applicable, (x) if such CORRA Benchmark is a term rate, any tenor for such CORRA Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such CORRA Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such CORRA Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such CORRA Benchmark that is then-removed from the definition of "CORRA Interest Period, pursuant to Section 2.11(d).

**"CORRA Benchmark"** means, initially, the Term CORRA Reference Rate or Daily Compounded CORRA, as the case may be; provided that if a CORRA Benchmark Transition Event has occurred with respect to the Term CORRA Reference Rate, Daily Compounded CORRA, or the then-current CORRA Benchmark, then "CORRA Benchmark" means the applicable CORRA Benchmark Replacement to the extent that such CORRA Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.11(d).

**"CORRA Benchmark Replacement"** means, with respect to any CORRA Benchmark Transition Event:

- (a) where a CORRA Benchmark Transition Event has occurred with respect to Term CORRA Reference Rate, Daily Compounded CORRA; and;
- (b) where a CORRA Benchmark Transition Event has occurred with respect to a CORRA Benchmark other than the Term CORRA Reference Rate, the sum of:
  - (i) the alternate benchmark rate that has been selected by the Agent and the Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the CORRA Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and
  - (ii) the related CORRA Benchmark Replacement Adjustment.

If the CORRA Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the CORRA Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

**"CORRA Benchmark Replacement Adjustment"** means, with respect to any replacement of the then-current CORRA Benchmark with an CORRA Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Agent and the Borrower giving due consideration to

(a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable CORRA Unadjusted Benchmark Replacement by the CORRA Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable CORRA Unadjusted Benchmark Replacement for Cdn. Dollar-denominated syndicated credit facilities at such time.

**"CORRA Benchmark Replacement Date"** means a date and time determined by the Agent, which date shall be no later than the earliest to occur of the following events with respect to the then-current CORRA Benchmark:

- (a) in the case of clause (a) or (b) of the definition of "CORRA Benchmark Transition Event", the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such CORRA Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all CORRA Available Tenors of such CORRA Benchmark (or such component thereof); or
- (b) in the case of clause (c) of the definition of "CORRA Benchmark Transition Event," the first (1st) date on which such CORRA Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such CORRA Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any CORRA Available Tenor of such CORRA Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the "CORRA Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) with respect to any CORRA Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current CORRA Available Tenors of such Benchmark (or the published component used in the calculation thereof).

**"CORRA Benchmark Transition Event"** means the occurrence of one or more of the following events with respect to the then-current CORRA Benchmark:

- (a) a public statement or publication of information by or on behalf of the administrator of such CORRA Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all CORRA Available Tenors of such CORRA Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any CORRA Available Tenor of such CORRA Benchmark (or such component thereof);
- (b) a public statement or publication of information by the regulatory supervisor for the administrator of such CORRA Benchmark (or the published component used in the calculation thereof), the Bank of Canada, an insolvency official with

jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such CORRA Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such CORRA Benchmark (or such component), which states that the administrator of such CORRA Benchmark (or such component) has ceased or will cease to provide all CORRA Available Tenors of such CORRA Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any CORRA Available Tenor of such CORRA Benchmark (or such component thereof); or

- (c) a public statement or publication of information by the regulatory supervisor for the administrator of such CORRA Benchmark (or the published component used in the calculation thereof) announcing that all CORRA Available Tenors of such CORRA Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a "CORRA Benchmark Transition Event" will be deemed to have occurred with respect to any CORRA Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current CORRA Available Tenor of such CORRA Benchmark (or the published component used in the calculation thereof).

**"CORRA Benchmark Unavailability Period"** means, the period (if any) (a) beginning at the time that a CORRA Benchmark Replacement Date has occurred if, at such time, no CORRA Benchmark Replacement has replaced the then-current CORRA Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.11 and (b) ending at the time that a CORRA Benchmark Replacement has replaced the then-current CORRA Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.11.

**"CORRA Conforming Changes"** means, with respect to the use or administration of a CORRA Benchmark or the use, administration, adoption or implementation of any CORRA Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Prime Rate", the definition of "Business Day", the definition of "CORRA Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of Borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.11 and other technical, administrative or operational matters) that the Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

**“CORRA Interest Period”** means (a) with respect to each Term CORRA Loan, the initial period (subject to availability of one (1) or three (3) months commencing on and including the date specified in the Drawdown Notice, Conversion Notice or Rollover Notice is made, or the CORRA Rollover Date, as the case may be, applicable to such Term CORRA Advance and ending on and excluding the last day of such initial period, and thereafter, each successive period (subject to availability) of approximately one (1) month or three (3) months (or such other period as the Agent and the Lenders permit) as selected by the Borrower and notified to the Agent in writing commencing on and including the last day of the prior CORRA Interest Period; and (b) with respect to each Daily Compounded CORRA Advance, initial period (subject to availability) of approximately one (1) month or three (3) months commencing on and including the date on which the Drawdown Notice, Conversion Notice or Rollover Notice is made, or the CORRA Rollover Date, as the case may be, applicable to such Daily Compounded CORRA Advance and ending on and excluding the last day of such initial period, and thereafter, each successive period (subject to availability) of approximately one (1) month or three (3) months (or such other period as the Agent and the Lenders permit) commencing on and including the last day of the prior CORRA Interest Period; provided however that:

- (a) in the case of a CORRA Rollover, the last day of each CORRA Interest Period shall also be the first (1st) day of the next CORRA Interest Period;
- (b) the last day of each CORRA Interest Period shall be a Business Day and if not, the Borrower shall be deemed to have selected day a CORRA Interest Period the last day of which is the first (1st) Business Day following the last day of the CORRA Interest Period selected by the Borrower, unless such first (1st) Business Day is in a succeeding calendar month, in which case, the last day of such CORRA Interest Period shall be the immediately preceding Business Day; and
- (c) notwithstanding any of the foregoing, the last day of each CORRA Interest Period shall be on or before the Maturity Date.

**“CORRA Relevant Governmental Body”** means the Bank of Canada, or a committee officially endorsed or convened by the Bank of Canada, or any successor thereto.

**“CORRA Rollover”** means with respect to any Term CORRA Advance or Daily Compounded CORRA Advance, the continuation of all or a portion of such Advance (subject to the terms and conditions hereof) for an additional CORRA Interest Period subsequent to the initial or any subsequent CORRA Interest Period applicable thereto.

**“CORRA Rollover Date”** means the date of commencement of a new CORRA Interest Period applicable to a Term CORRA Advance or a Daily Compounded CORRA Advance.

**“CORRA Unadjusted Benchmark Replacement”** means the applicable CORRA Benchmark Replacement excluding the related CORRA Benchmark Replacement Adjustment.

**“Covered Entity”** means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered

bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“**Credit Facilities**” means the Revolving Facility, the Revolving B Facility, the Revolving C Facility, the Revolving D Facility, the Swingline Facility, the Term Facility and the Delayed Draw Facility, and “**Credit Facility**” means any one of them.

“**Daily Compounded CORRA**” means, for any day (a “**Daily Compounded CORRA Rate Day**”), a rate per annum equal to CORRA (with interest accruing on a compounded daily basis, with the methodology and conventions for this rate being established by the Agent, in its discretion) for the day (such day, the “**Daily Compounded CORRA Determination Day**”), that is five (5) Business Days prior to (a) if such Daily Compounded CORRA Rate Day is a Business Day, such Daily Compounded CORRA Rate Day, or (b) if such Daily Compounded CORRA Rate Day is not a Business Day, the Business Day immediately preceding such Daily Compounded CORRA Rate Day, in each case, as CORRA is published by the administrator; provide, however, that if as of 5:00 p.m. (Toronto time) on any Daily Compounded CORRA Determination Day, CORRA for the applicable tenor has not been published by the administrator and a CORRA Benchmark Replacement Date with respect to Daily Compounded CORRA has not occurred, then Daily Compounded CORRA will be CORRA as published by the administrator so long as such first preceding Business Day is not more than three (3) Business Days prior to such Daily Compounded CORRA Determination Day; provided, that to the extent such rate as determined above shall, at any time, be less than the Floor, such rate shall be deemed to be the Floor for all purposes herein.

“**Daily Compounded CORRA Adjustment**” means a percentage equal to 0.29547% per annum and 0.32138% per annum for a one (1) month and three (3) month period, respectively.

“**Daily Compounded CORRA Advances**” means an Advance that bears interest at a rate based on Adjusted Daily Compounded CORRA.

“**Daily Compounded CORRA Margin**” means, with respect to Daily Compounded CORRA Advances, the applicable percentage rate per annum indicated below the references to “Daily Compounded CORRA Margin” in the pricing grid in the definition of “Applicable Margin”.

“**Daily Simple SOFR**” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided, that if the Agent decides that any such convention is not administratively feasible for the Agent, then the Agent may establish another convention in its reasonable discretion.

“**Debt**” means, with respect to any Person, without duplication, the aggregate of the following amounts, at the date of determination:

- (a) all indebtedness of such Person to any other Person for borrowed money;

- (b) all obligations of such Person for the deferred purchase price of Property or services which constitute indebtedness;
- (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments;
- (d) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (whether or not the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property);
- (e) all obligations of such Person as lessee under leases that have been, in accordance with GAAP, recorded as Capital Leases;
- (f) all reimbursement obligations, contingent or otherwise, of such Person under bankers' acceptance, letter of credit and similar facilities;
- (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any partnership or shareholder or other Equity Interests of such Person (for greater certainty, not including obligations with respect to unexercised options and rights of first refusal and where conditions precedent to the obligations have not occurred);
- (h) all Contingent Obligations of such Person (other than, for certainty, the Obligor guarantees and other Security);
- (i) all Earn Out Obligations that have become due but have not yet been paid;
- (j) all obligations of such Person under any Hedge Arrangements; and
- (k) any other obligation arising under arrangements or agreements including without limitation off-balance sheet financing that, in substance, provide debt financing to such Person.

For greater certainty, "Debt" shall exclude trade payables, customer deposits and accrued liabilities arising in the ordinary course of business.

**"Default"** means any event or condition that constitutes an Event of Default or that would constitute an Event of Default except for satisfaction of any condition subsequent required to make the event or condition an Event of Default, including giving of any notice, passage of time, or both.

**"Default Right"** has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

**"Delayed Draw Facility"** has the meaning set forth in Section 2.1(f).

**"Delayed Draw Lenders"** means those Lenders designated as such in Schedule A annexed hereto providing the Delayed Draw Facility to the Borrower pursuant to this Agreement, and their successors and permitted assigns.



**“Depreciation Expense”** means, for any period with respect to any Person, depreciation, amortization, depletion and other like reductions to income of such Person for such period not involving any outlay of cash, determined without duplication and on a consolidated basis in accordance with GAAP.

**“Disposition”** means any sale, assignment, transfer, conveyance, lease or other disposition of any asset of any Obligor in a single transaction or a series of related transactions and the words **“Dispose”** and **“Disposed”** shall have correlative meanings. For certainty, (i) the purchase and sale of Cash Equivalents and (ii) the conversion of cash from one currency to another currency do not constitute Dispositions.

**“Distribution”** shall mean, with respect to any Person, any payment, directly or indirectly, by such Person: (a) of any dividends on any Equity Interests, other than dividends or distributions payable in units, shares or other Equity Interests; (b) on account of, or for the purpose of setting apart any property for a sinking or other analogous fund for, the purchase, redemption, retirement or other acquisition of any Equity Interests of such Person; (c) of any other distribution (other than distributions in units, shares or other Equity Interests) in respect of any Equity Interests of such Person; (d) of any management, consulting or similar fee or compensation (of any nature or kind, including for certainty the Shareholder Backstop Fee) or any bonus payment or comparable payment, or by way of gift or other gratuity, to the extent such distributions are made in cash, to any Affiliate of such Person or to any director, officer or member of the management of an Affiliate of such Person; (e) of any Earn Out Obligations; (f) on the Subordinated Debt; or (g) on Shareholder Subordinated Debt; provided that payments by an Obligor in the course of its business to employees, officers and members of management of Obligors, expense reimbursement to directors shall not constitute Distributions hereunder.

**“Drawdown”** means:

- (a) the advance of a Prime Rate Advance, a US Base Rate Advance, a SOFR Advance or a CORRA Advance; or
- (b) the issue of Letters of Credit.

**“Drawdown Date”** means the date on which a Drawdown is made by the Borrower pursuant to the provisions hereof and which shall be a Business Day.

**“Drawdown Notice”** means the notice of request for advance substantially in the form annexed hereto as Schedule B to be given to the Agent by the Borrower pursuant to Section 2.6.

**“Earn Out Obligations”** means any amounts payable by an Obligor to any one or more sellers of applicable assets or Equity Interests after the Closing Date but following completion of an Acquisition and whether based on working capital purchase price adjustments, future performance, future profitability or otherwise (provided, for certainty, reimbursement for expenses, payments in connection with indemnity claims and other similar payments shall not constitute Earn Out Obligations).

**“EBITDA”** means at any time, without duplication, the consolidated Net Income of the Borrower determined in accordance with GAAP increased by:

- (a) all non-recurring, extraordinary or unusual losses satisfactory to the Agent;
- (b) unrealized foreign exchange losses;
- (c) transaction costs, fees and expenses incurred in connection with the transactions contemplated by this Agreement on the Third Closing Date not to exceed \$300,000;
- (d) transaction costs, fees and expenses incurred in connection with the transactions contemplated by this Agreement on the Fourth Closing Date and in connection with the Subordinated Credit Agreement not to exceed \$500,000;
- (e) transaction costs, fees and expenses incurred in connection with the transactions contemplated by this Agreement on the Fifth Closing Date and in connection with the Subordinated Credit Agreement and the TQ Debt not to exceed \$500,000;
- (f) transaction costs, fees and expenses incurred in connection with Acquisitions permitted under this Agreement and consented to by the Lenders;
- (g) Interest Expense (including payments made in connection with Shareholder Subordinated Debt);
- (h) Income Tax Expense;
- (i) non-cash compensation (i.e., Equity Interest based);
- (j) Depreciation Expense;
- (k) Management Fees and board of director fees and expenses paid or accrued by the Borrower in accordance with this Agreement in an aggregate amount not to exceed \$750,000;
- (l) maintenance expenditures that are actually Capital Expenditures in nature that will be, at the end of the Fiscal Year, reversed into property, plant and equipment;
- (m) accrued Shareholder Backstop Fees;
- (n) fees and expenses incurred and to be incurred prior to December 31, 2024 in connection with the retention and advice provided by KPMG LLP and Alvarez & Marsal (x) in an aggregate amount not to exceed \$3,500,000, and (y) in an amount beyond \$3,500,000 provided that such amounts are funded from proceeds of Equity Interests issued by the Borrower or Shareholder Subordinated Debt;

less

- (o) dividend and interest income;
- (p) unrealized foreign exchange gains;
- (q) non-recurring, extraordinary or unusual gains;
- (r) the reversal at the end of the Fiscal Year of maintenance expenditures that were actually Capital Expenditures in nature into property, plant and equipment,

in each case to the extent such amounts were included in the calculation of Net Income for such period.

Should an Obligor make an Acquisition or complete a Disposition during any fixed period:

- (s) in respect of each (i) new Obligor which has become a Subsidiary of the Borrower, and (ii) Acquisition of Property constituting substantially all of the Property of a Person or a material portion of a division, business, operation or undertaking of a Person in such fiscal period, EBITDA shall be determined (except for purposes of Excess Cash Flow) as if such Obligor had been a Subsidiary (or such Property had been owned) during the entire fiscal period; and
- (t) in respect of each (i) Obligor which has ceased to be a Subsidiary of the Borrower, and (ii) Dispositions of Property constituting substantially all of the Property of a Person or a material portion of a division, business, operation or undertaking of a Person in such fiscal period, EBITDA shall be determined (except for purposes of Excess Cash Flow) as if such Obligor had not been a Subsidiary (or such Property had been Disposed of) during the entire fiscal period.

**“Eligible Assignee”** means any Person (other than a natural person, any Obligor or any Affiliate of an Obligor or a Non-Funding Lender), in respect of which any consent that is required by Section 16.2 has been obtained.

**“Employee Plans”** means an employee benefit plan as defined in Section 3(3) of ERISA subject to Title I of ERISA that is or, within the preceding five years, has been established or maintained, or to which contributions are or, within the preceding five years, have been made or are required to be made, by an Obligor or any member of its Obligor’s Controlled Group or with respect to which an Obligor or any member of its Controlled Group has or would reasonably be expected to have liability.

**“Encumbrance”** means, in respect of any Person, any mortgage, debenture, pledge, hypothec, lien, charge, assignment by way of security, hypothecation or security interest granted or permitted by such Person or arising by operation of law, in respect of any of such Person’s Property, or any consignment or Capital Lease of Property by such Person as consignee or lessee or any other security agreement, trust or arrangement having the effect of security for the payment of any debt, liability or obligation, and

**“Encumbrances”, “Encumbrancer”, “Encumber” and “Encumbered”** shall have corresponding meanings.

**“Environmental Liability”** means any liability of an Obligor arising from the breach of any Requirements of Environmental Law.

**“Equity Interest”** means (i) in the case of any corporation, all capital stock and any securities exchangeable for or convertible into capital stock, (ii) in the case of an association or business entity, any and all shares, interests, participation rights or other equivalents of corporate stock (however designated) in or to such association or entity, (iii) in the case of a partnership, limited liability company or unlimited liability company, partnership or membership interests (whether general or limited), as applicable, and (iv) any other ownership interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing Person, and including, in all of the foregoing cases described in clauses (i), (ii), (iii) or (iv), any warrants, rights or other options to purchase or otherwise acquire any of the interests described in any of the foregoing cases.

**“Equivalent Amount”** means with respect to any two currencies, the amount obtained in one such currency when an amount in the other currency is translated into the first currency using the Bank of Canada 4:30 p.m. spot rate on the prior Business Day with respect to which such computation is required for the purpose of this Agreement.

**“ERISA”** means the *Employee Retirement Income Security Act of 1974* (United States) as amended from time to time, or any successor statute thereto, and the final, interim, temporary and other binding regulations and published and binding interpretations thereof.

**“Event of Default”** means any of the events or circumstances described in Section 12.1.

**“Excess Cash Flow”** means, in respect of any Fiscal Year of the Borrower, without duplication, EBITDA for such Fiscal Year less the aggregate for such Fiscal Year of:

- (a) all scheduled principal repayments of the Term Facility and the Delayed Draw Facility,
- (b) payments of principal of Debt incurred pursuant to clause (b) of the definition of Permitted Debt,
- (c) Unfunded Capital Expenditures,
- (d) cash paid Interest Expense (excluding payments made in connection with Shareholder Subordinated Debt),
- (e) cash paid Income Tax Expenses,
- (f) cash paid Management Fees made in accordance with the terms of the provisions of this Agreement,
- (g) cash paid director fees and expenses paid by the Borrower in accordance with the provisions of this Agreement,

- (h) to the extent added back to EBITDA, cash paid costs and expenses paid by the Borrower in connection with Acquisitions permitted hereunder and consented to by the Lenders,
- (i) to the extent added back to EBITDA, cash paid costs and expenses paid by the Borrower in connection with the transactions contemplated pursuant to this Agreement and the Subordinated Credit Agreement on the Fourth Closing Date;
- (j) to the extent added back to EBITDA, fees and expenses incurred and to be incurred in connection with the retention and advice provided by KPMG LLP and Alvarez & Marsal; and
- (k) non-recurring, extraordinary or unusual cash losses that were added back in calculating EBITDA,

plus

- (l) non-recurring, extraordinary or unusual cash gains that were deducted in calculating EBITDA.

**“Excluded Issuances”** means Equity Interests issued by the Borrower or Holdco to (i) management, employees and directors of the Borrower or Holdco in connection with their purchasing Equity Interests in the Borrower or Holdco from time to time; (ii) existing and future stakeholders of the Borrower or Holdco for the specific purpose of raising proceeds to enable the Obligors to (A) complete Acquisitions and Investments permitted pursuant to the terms of this Agreement, (B) pay Earn Out Obligations, (C) fund Capital Expenditures, and (D) prepay a Non-Consenting Lender in accordance with Section 14.14(e); (iii) existing and future shareholders of the Borrower or Holdco in connection with any conversion of Shareholder Subordinated Debt to Equity Interests, (iv) existing and future shareholders of the Borrower or Holdco in connection with a Shareholder Backstop Fee Payment Transaction, and (v) existing and future shareholders of the Borrower or Holdco in connection with the injection of funds pursuant to the Shareholder Contribution Agreement, and provided that “Excluded Issuances” shall also include any Specified Equity Contribution or Liquidity Contribution.

**“Excluded Swap Obligation”** means, with respect to any Guarantor (or the Borrower with respect to the obligations of any other Obligor under any Hedge Arrangement), any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Guarantor (or the Borrower as the case may be) of, or the grant by such Guarantor (or the Borrower as the case may be) of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s (or the Borrower’s as the case may be) failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guarantee of such Guarantor (or the Borrower as the case may be) or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one Hedge Arrangement, such exclusion shall apply only to the portion of such Swap Obligation that

is attributable to Hedge Arrangements for which such guarantee or security interest is or becomes illegal.

**“Excluded Taxes”** means, with respect to the Agent, any Lender, the Issuing Lender or any other recipient of any payment to be made by or on account of any obligation of an Obligor hereunder or under any other Loan Document (each, a **“Recipient”**), (a) taxes imposed on or measured by its net income, capital taxes and franchise taxes imposed on it (in lieu of net income taxes), in each case, (i) by the jurisdiction (or any political subdivision thereof) under the laws of which such Recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located or (ii) that are Other Connection Taxes, (b) any branch profits taxes or any similar tax imposed by any jurisdiction described in clause (a) in which such Recipient is located, (c) Taxes imposed under FATCA, (d) any withholding tax gross up obligation of the Borrower that is directly attributable to a Lender’s failure to comply with Section 15.2(f), (e) any withholding Taxes imposed on a payment by or on account of any obligation of an Obligor hereunder or under any other Loan Document: (i) to a Person with which the Obligor does not deal at arm’s length (for the purposes of the *Income Tax Act* (Canada)) at the time of making such payment or (ii) in respect of a debt or other obligation to pay an amount to a Person with whom the payer is not dealing at arm’s length (for the purposes of the *Income Tax Act* (Canada)) at the time of such payment and (f) any Taxes imposed on a Recipient by reason of such Recipient: (i) being a “specified shareholder” (as defined in subsection 18(5) of the *Income Tax Act* (Canada)) of any Obligor, or (ii) not dealing at arm’s length (for the purposes of the *Income Tax Act* (Canada)) with a “specified shareholder” (as defined in subsection 18(5) of the *Income Tax Act* (Canada)) of any Obligor.

**“Executive Order”** has the meaning set forth in Section 9.1(jj).

**“FATCA”** means Sections 1471 through 1474 of the IRC as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the IRC.

**“Federal Flood Insurance”** means, federally backed Flood Insurance available under the National Flood Insurance Program to owners of real property improvements located in Special Flood Hazard Areas in a community participating in the National Flood Insurance Program.

**“Federal Funds Effective Rate”** means, for any day, an annual rate of interest, expressed on the basis of a year of three-hundred and sixty (360) days, equal, for each day during such period, to the weighted average of the rates on overnight United States federal funds transactions with members of the Federal Reserve System arranged by United States federal funds brokers, as published for such day (or, if such day is not a Business Day, for the preceding Business Day) by the Federal Reserve Bank of New York or, for any day on which that rate is not published for that day by the Federal Reserve Bank of New York, the simple average of the quotations for that day for such transactions received by the Agent from three United States federal funds brokers of recognized standing selected by it.

**“FEMA”** means, the Federal Emergency Management Agency, a component of the U.S. Department of Homeland Security that administers the National Flood Insurance Program.

**“Fifth Closing Date”** means March 11, 2024.

**“Financial Assistance”** means, without duplication and with respect to any Person, all loans made by that Person and guarantees or Contingent Obligations granted or incurred by that Person for the purpose of or having the effect of providing financial assistance to another Person or Persons, including, without limitation, letters of guarantee, letters of credit, legally binding comfort letters or indemnities issued in connection therewith, endorsements of bills of exchange (other than for collection or deposit in the ordinary course of business), obligations to purchase assets regardless of the delivery or non-delivery thereof and obligations to make advances or otherwise provide financial assistance to any other entity and for greater certainty **“Financial Assistance”** shall include any guarantee of any third party lease obligations.

**“FIRREA”** means, the *Financial Institutions Reform, Recovery and Enforcement Act of 1989*.

**“Fiscal Quarter”** means, subject to Section 10.4(j), each successive three-month period of the Borrower’s Fiscal Year ending on or about September 30, December 31, March 31 and June 30.

**“Fiscal Year”** means, subject to Section 10.4(j), a twelve-month period ending on June 30 of any year, as such date may be changed with the consent of the Majority Lenders.

**“Fixed Charge Coverage Ratio”** means, in respect of any period, the ratio calculated by dividing (i) the sum of EBITDA less (A) Unfunded Capital Expenditures (excluding Growth Capex), (B) cash paid Income Tax Expense, and (C) Permitted Distributions (other than Permitted Distributions listed in paragraphs (a), (b), (c), (e), (h) and (i) of the definition thereof), by (ii) Fixed Charges, all as determined on a consolidated basis for the most recently completed Four Quarter Period.

**“Fixed Charges”** means, without duplication and on a consolidated basis, with respect to the Borrower for any period, the sum of all scheduled principal repayments of the Term Facility and the Delayed Draw Facility, scheduled capital lease principal repayments and other scheduled principal repayments of Debt and cash paid and payable Interest Expense (excluding, however, interest payments and accrual of interest payments on Shareholder Subordinated Debt and any “PIK”, deferred to maturity or capitalized interest under this Agreement or the Subordinated Credit Agreement), in each case, in respect of Total Debt during such period.

**“Flood Insurance”** means, for any real Property located in a Special Flood Hazard Area, Federal Flood Insurance or private insurance that meets the requirements set forth by FEMA in its Mandatory Purchase of Flood Insurance Guidelines. Flood Insurance shall be in an amount equal to the lesser of (i) the “replacement cost value” of the buildings and any personal property Collateral located on the real Property or (ii) the

maximum policy limits set under the National Flood Insurance Program, in each case, with deductibles not to exceed \$50,000.

**“Floor”** means the rate per annum of interest equal to 0%.

**“Foreign Official”** has the meaning set forth in Section 9.1(ii).

**“Four Quarter Period”** means as at the last day of any particular Fiscal Quarter of the Borrower, the period of four consecutive Fiscal Quarters which includes the Fiscal Quarter ending as of the date of such calculation (including the last day thereof) and the immediately preceding three Fiscal Quarters.

**“Fourth Closing Date”** means August 31, 2023.

**“GAAP”** means the “Accounting Standards for Private Enterprises (ASPE)” in effect from time to time in Canada.

**“Governmental Authority”** means the government of Canada or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any supra-national bodies such as the European Union or the European Central Bank and including a Minister of the Crown, Superintendent of Financial Institutions or other comparable authority or agency.

**“Growth Capex”** means any Capital Expenditure made by any Person in connection with installing new production lines or upgrading existing production lines to increase capacity.

**“Guarantors”** means, collectively, all Subsidiaries of the Borrower from time to time but excluding Excluded Subsidiaries and includes, without limitation, each of those Persons identified on Schedule E and their successors and assigns and **“Guarantor”** means any one of them.

**“Hazardous Material”** shall mean any substance, product, waste, pollutant, material, chemical, contaminant, dangerous goods, hazardous waste, constituent or other material listed, regulated, or addressed under any Requirements of Environmental Law, including, without limitation, asbestos, petroleum product or by-product, polychlorinated biphenyls and radon.

**“Hedge Arrangement”** means, for any period, for any Person, any arrangement or transaction between such Person and any other Person which is an interest rate swap transaction, basis swap, forward interest rate transaction, commodity swap, interest rate option, forward foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency interest rate swap transaction, currency option or any other similar transaction (including any option with respect to any of such transactions or arrangements) designed to protect or mitigate against risks in interest, currency exchange or commodity price fluctuations.

**“Holdco”** means Joriki Topco Inc., a corporation formed under the laws of Ontario.



**“Hostile Take-Over Bid”** shall mean a Take-Over Bid by an Obligor or in which an Obligor is involved, in respect of which the board of directors (or persons performing similar functions) of the Person whose securities are subject to such Take-Over Bid has recommended rejection of such Take-Over Bid.

**“Hypothecary Representative”** has the meaning set forth in Section 17.16.

**“Income Tax Expense”** means, with respect to the Borrower, for any period, the aggregate, without duplication and on a consolidated basis, of all Taxes on the income of the Borrower for such period, determined in accordance with GAAP.

**“Indemnified Taxes”** means Taxes other than Excluded Taxes.

**“Initial Cash Flow Forecast”** means, a rolling weekly Net Cash Flow forecast for Borrower and its Subsidiaries on a consolidated basis, with respect to the 9 weeks to November 1, 2024, such forecast to be in form and substance satisfactory to the Agent (it being acknowledged that the form provided by the Borrower to the Agent on September 12, 2024 is satisfactory to the Agent).

**“Insolvency Legislation”** means legislation in any applicable jurisdiction relating to reorganization, arrangement, compromise or re-adjustment of debt, dissolution or winding-up, or any similar legislation, and specifically includes for greater certainty the *Bankruptcy and Insolvency Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada), the *Winding-Up and Restructuring Act* (Canada) and the *Bankruptcy Code* (United States).

**“Intellectual Property”** means the intellectual property in patents, patent applications, trade-marks, trade-mark applications, trade names, service marks, copyrights, copyright registrations and trade secrets including, without limitation, customer lists and information and business opportunities, industrial designs, proprietary software, technology, recipes and formulae and other similar intellectual property rights.

**“Interbank Reference Rate”** means the interest rate expressed as a percentage per annum which is customarily used by the Agent when calculating interest due by it or owing to it arising from correction of errors and other adjustments between it and other Canadian chartered banks.

**“Intercreditor Agreement”** means the intercreditor agreement dated as of September 8, 2023 among, inter alia, the Agent, the Subordinated Agent and the Borrower, as such agreement may be amended, restated, supplemented or replaced from time to time.

**“Interest Expense”** of the Borrower means, for any period, without duplication and on a consolidated basis, the aggregate amount of interest and other financing charges paid or payable by the Borrower, on account of such period with respect to Debt including interest, amortization of discount and financing fees, commissions, discounts, the interest or time value of money component of costs related to factoring or securitizing receivables or monetizing inventory and other fees and charges payable with respect to letters of credit, letters of guarantee and bankers’ acceptance financing, standby fees, the interest component of Capital Leases, all as determined in accordance with GAAP.

**“Interest Payment Date”** means:

- (a) with respect to each Prime Rate Advance and US Base Rate Advance, the first (1st) Business Day of each calendar month;
- (b) with respect to any Term CORRA Advance, the last day of the CORRA Interest Period applicable to such Advance;
- (c) with respect to any Daily Compounded CORRA Advance, the last day of each CORRA Interest Period applicable to such Advance; and
- (d) with respect to each SOFR Advance, the last Business Day of each applicable Interest Period and, if any Interest Period is longer than ninety (90) days, the last Business Day of each such ninety (90) day period during such Interest Period.

**“Interest Period”** means,

- (a) with respect to each Prime Rate Advance and US Base Rate Advance, the period commencing on the applicable Drawdown Date or Conversion Date, as the case may be, and terminating on the date selected by the Borrower hereunder for the Conversion of such Advance into another type of Advance or for the repayment of such Advance;
- (b) with respect to each SOFR Advance, the period selected by the Borrower and being 1, 3 or 6 months’ duration, subject to availability, commencing on the applicable Drawdown Date, Rollover Date or Conversion Date of such Advance, as the case may be; and
- (c) with respect to a Letter of Credit, the period commencing on the date of issuance of the Letter of Credit and terminating on the last day that the Letter of Credit is outstanding;

provided that (i) in any case, the last day of each Interest Period shall be also the first (1st) day of the next Interest Period, (ii) the last day of each Interest Period shall be a Business Day and if the last day of an Interest Period selected by the Borrower is not a Business Day the Borrower shall be deemed to have selected an Interest Period the last day of which is the Business Day next following the last day of the Interest Period otherwise selected unless, in the case of a SOFR Advance, such next following Business Day falls in the next calendar month, in which event the Borrower shall be deemed to have selected an Interest Period the last day of which is the Business Day next preceding the last day of the Interest Period otherwise selected, and (iii) no Interest Period shall expire subsequent to the Maturity Date.

**“Investment”** in any Person means any direct or indirect (a) acquisition of any Equity Interest in any other Person, or (b) loan or advance made to any other Person. In determining the amount of any Investment involving a transfer of any Property other than cash, such Property shall be valued at its fair market value at the time of such transfer. For greater certainty an Acquisition shall not be treated as an Investment.

**“IRC”** means *Internal Revenue Code of 1986* of the United States of America (as amended).

**“ISDA Master Agreement”** means the 2002 ISDA Master Agreement (Multi-Currency - Cross Border) as published by the International Swaps and Derivatives Association, Inc., as amended, revised or replaced from time to time.

**“Issuing Lender”** means BNS or such other Lender as may from time to time be designated as an Issuing Lender by the Agent and the Borrower.

**“Joriki”** means Joriki Inc., an Ontario corporation.

**“Joriki Acquisition”** means the acquisition by the Borrower of the Joriki Shares pursuant to the Joriki Purchase Agreement.

**“Joriki Purchase Agreement”** means the purchase agreement dated as of September 13, 2019 among Holdco, the Borrower, Joriki, PranamX Inc., Joriki Holdings Inc. and Yogesh Sennik.

**“Joriki Shares”** means all of the Equity Interests of Joriki being acquired under the Joriki Purchase Agreement.

**“Judgment Conversion Date”** has the meaning set forth in Section 17.5(a)(ii).

**“Judgment Currency”** has the meaning set forth in Section 17.5(a).

**“Lender-Related Distress Event”** means, with respect to any Lender or any Person that directly or indirectly controls such Lender (each a **“Distressed Person”**), a voluntary or involuntary case with respect to such Distressed Person under any Insolvency Legislation or a custodian, conservator, receiver or similar official is appointed for such Distressed Person or any substantial part of such Distressed Person’s assets, or such Distressed Person is subject to a forced liquidation, merger, sale or other change of control supported in whole or in part by guaranties or other support (including, without limitation, the nationalization or assumption of ownership or operating control by the government of Canada, the United States or other Governmental Authority), or such Distressed Person makes a general assignment for the benefit of its creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Person or its assets to be, insolvent, bankrupt, or deficient in meeting any capital adequacy or liquidity standard of any such governmental authority.

**“Lenders”** means the Persons designated in Schedule A annexed hereto as either a Revolving Lender, a Revolving B Lender, a Revolving C Lender, a Revolving D Lender, a Term Lender, a Delayed Draw Lender or the Swingline Lender and reference to **“Lender”** in this Agreement may mean that Lender in its capacity as a Revolving Lender, a Revolving B Lender, a Revolving C Lender, a Revolving D Lender, a Term Lender, a Delayed Draw Lender or the Swingline Lender, as the case may be, if the context so requires and **“Lender”** means any one of the Lenders and includes each of their successors and permitted assigns.

**“Lenders’ Counsel”** means the firm of McMillan LLP or such other firm of legal counsel as the Agent may from time to time designate and any and all local agent counsel retained by McMillan LLP for and on behalf of the Agent.

**“Lending Office”** means, with respect to a particular Lender, the branch or office specified in Schedule A from which such Lender makes Advances and to which the Agent disburses payments received for the benefit of such Lender.

**“Letter of Credit Fee Rate”** means, with respect to a Letter of Credit, the annual percentage per annum indicated below the reference to “Letters of Credit Fee Rate” in the pricing grid in the definition of “Applicable Margin” relevant to the period in respect of which determination is being made.

**“Letters of Credit”** means letters of credit or letters of guarantee issued by the Issuing Lender pursuant to the Revolving Facility at the request and for the account of the Borrower under this Agreement, and **“Letter of Credit”** means any one thereof.

**“Liquidity”** means, in the case of the Borrower on a consolidated basis, the sum of (i) availability under the Revolving Facility, the Revolving B Facility, the Revolving C Facility and the Revolving D Facility, plus (ii) cash on hand, and (iii) that portion of the TQ Debt that has not yet been funded.

**“Loan Documents”** means this Agreement, the Security, each Subordination Agreement, all guarantees delivered by any Obligor pursuant to this Agreement, the Intercreditor Agreement, each fee letter and each document, agreement, instrument and certificate delivered to the Agent or any Lenders by or on behalf of an Obligor or any other Person (in the case of any other Person, as required by the terms of this Agreement) on or after the Closing Date in each case as the same may from time to time be supplemented, amended or restated, and **“Loan Document”** shall mean any one of the Loan Documents.

**“LRG”** means a Person that provides a limited recourse guarantee in favour of the Agent of the Obligations of the Borrower.

**“Majority Lenders”** means Lenders holding greater than 66⅔% of the Commitments under the Credit Facilities.

**“Management Fees”** means management fees paid by the Borrower to TorQuest Fund IV GP Inc. and TorQuest Capital Fund IV GP Inc. pursuant to any management agreement between the Borrower and such Persons in effect from time to time.

**“Material Adverse Effect”** shall mean a material adverse effect on (a) the business, operations, properties, assets or condition (financial or otherwise) of the Borrower on a consolidated basis, (b) the legality, validity or enforceability of any of the Loan Documents considered as a whole, including the validity, enforceability, perfection or priority of any encumbrance created under any of the Security considered as a whole, (c) the ability of the Obligors, as a whole, to pay or perform any of their debts, liabilities or obligations under any of the Loan Documents, or (d) the right, entitlement or ability of the Agent or the Lenders to enforce their rights or remedies under any of the Loan Documents.

**“Material Contracts”** means each of the agreements identified in Schedule 9.1(t) and any agreement, contract or legally binding arrangement entered into from time to time by an Obligor or to which any of their property or assets may be subject for which breach, non-performance, cancellation, failure to renew, termination, revocation or lapse

could reasonably be expected to have a Material Adverse Effect. For certainty, the [REDACTED] Contract, the [REDACTED] Contract, the [REDACTED] Contract and the [REDACTED] Contract are not Material Contracts.

**“Material Licences”** means each licence, permit or approval issued by any Governmental Authority to any Obligor the breach or default in respect of which could reasonably be expected to result in a Material Adverse Effect.

**“Maturity Date”** means the earlier of September 20, 2026 and the date on which the Credit Facilities are terminated pursuant to Section 12.2.

**“Mortgages”** means, the first lien mortgages or deeds of trust executed by any Obligor in favour of the Agent, by which such Obligor has granted to the Agent, as security for the Obligations, a first priority ranking Encumbrance (subject to Permitted Encumbrances) on any Mortgaged Property to secure the Obligations.

**“Mortgaged Property”** means each parcel of real property and the improvements thereto owned by any Obligor on the Closing Date or acquired thereafter with respect to which a Mortgage is to be granted under the Security Documents and includes each other parcel of real property and the improvements thereto owned by any Obligor with respect to which a Mortgage is granted pursuant to the Security Documents.

**“Multiemployer Plan”** means any US Pension Plan that is a “multiemployer plan” described in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA.

**“Net Cash Flow”** means, with respect to any period, an amount equal to the aggregate of all cash receipts less all ordinary course operating disbursements including legal and consultant costs, leasing costs and permitted and capital related costs plus any additional funding on a consolidated basis for such period and all such income, revenue, disbursements and expenses determined on a cash (and not accrual) basis.

**“Net Income”** means, for any period, with respect to the Borrower, the consolidated net income (loss) of the Borrower excluding all dividend and interest income, for such period, all as determined in accordance with GAAP.

**“Net Proceeds”** means any one or more of the following:

- (a) with respect to any Dispositions, the net amount equal to the aggregate amount received in cash in connection with such Disposition (including, without limitation, the release of any amount from an indemnity reserve, escrow or similar fund established in connection with such Disposition, but only as and when received), less the sum of reasonable fees, including reasonable accounting, advisory and legal fees, commissions and other out-of-pocket expenses, provision for taxes payable by such Obligor attributable to such Disposition (as evidenced by supporting documentation provided to the Agent), the unwinding of any hedge agreements incurred or paid for by an Obligor in connection with such Disposition, and the payment of any Debt secured by Encumbrances on the assets Disposed to the extent that such Encumbrances are permitted hereunder to rank in priority to the Security;

- (b) with respect to the receipt of proceeds under any insurance policy (other than business interruption insurance, director and officer insurance, representation and warranty insurance or liability policy), the net amount equal to the aggregate amount received (or receivable) in cash by an Obligor in connection with such insurance proceeds less a provision for taxes payable by such Obligor attributable to such insurance proceeds and any legal fees incurred in connection with the settlement or collection thereof; and
- (c) with respect to the issuance of any Equity Interests or Debt by any Person or of any capital contributions by any Person in such Person, the net amount equal to the aggregate amount received in cash in connection with such issuance or contribution by any Person in such Person, less the sum of reasonable fees, including reasonable accounting, advisory and legal fees, commissions and other out-of-pocket expenses (as evidenced by supporting documentation provided to the Agent) incurred or paid for by such Person in connection with the issuance of any such Equity Interests or Debt or of any capital contributions by any Person in such Person.

**“Non-Arm’s Length”** and similar phrases have the meaning attributed thereto for the purposes of the *Income Tax Act* (Canada); and **“Arm’s Length”** shall have the opposite meaning.

**“Non-Funding Lender”** means any Lender (i) that has failed to fund any payment or Advances required to be made by it hereunder or to purchase all participations required to be purchased by it hereunder and under the Loan Documents, or (ii) that has given verbal or written notice to the Borrower, the Agent or any Lender or has otherwise publicly announced that it believes that it will be unable to fund advances under credit arrangements to which it is a party, or (iii) with respect to which one or more Lender-Related Distress Events has occurred, or (iv) with respect to which the Agent or the Issuing Lender has knowledge that such Lender has defaulted in fulfilling its obligations (whether as an agent, lender or letter of credit issuer) under one or more other syndicated credit facilities, or (v) with respect to which the Agent has concluded, acting reasonably, and has advised the Lenders in writing that it is of the view that, there is a reasonable chance that such Lender shall become a “Non-Funding Lender” pursuant to any of (i), (ii) or (iii) above and that such Lender has been deemed a “Non-Funding Lender”.

**“██████”** means ████████ a Delaware corporation.

**“██████ Tetra Line #7”** means the line identified as such in Exhibit I.

**“██████ Contract”** means the contract dated as of March 1, 2021 between ████████ and the Borrower.

**“Obligations”** means, with respect to any Obligor, all of its present and future indebtedness, liabilities and obligations of any and every kind, nature or description whatsoever (whether direct or indirect, joint or several or joint and several, absolute or contingent, matured or unmatured, in any currency and whether as principal debtor, guarantor, surety or otherwise, including without limitation any interest that accrues thereon after or would accrue thereon but for the commencement of any case, proceeding or other action, whether voluntary or involuntary, relating to the bankruptcy,

insolvency or reorganization whether or not allowed or allowable as a claim in any such case, proceeding or other action) to each of the Agent, the Lenders (and their Affiliates), and any of them under, in connection with, relating to or with respect to each of the Loan Documents and any and all Hedge Arrangements and Service Agreements and all agreements relating to VISA, MasterCard and other charge cards issued by any Lender, and any unpaid balance thereof, provided that in the case of US Obligor's Obligations shall not include any Excluded Swap Obligations.

**"Obligors"** means, collectively, the Borrower and the Guarantors. As of the Fourth Closing Date, the Obligor's consist of each of the Persons identified on Schedule E.

**"OFAC"** means The Office of Foreign Assets Control of the US Department of the Treasury.

**"OFAC Event"** has the meaning set forth in Section 9.1(ii).

**"OFAC Sanctions Programs"** means all laws, regulations, and Executive Orders administered by OFAC and all economic and trade sanction programs administered by OFAC or the US Department of State, any and all similar United States federal laws, regulations or Executive Orders, and any similar laws, regulations or orders adopted by any State within the United States.

**"OFAC SDN List"** means the list of Specially Designated Nationals and Blocked Persons administered by OFAC, in each case, as renewed, extended, amended or replaced.

**"Organizational Documents"** means, with respect to any Person, such Person's articles or other charter documents, by-laws, shareholder agreement, partnership agreement, joint venture agreement, limited liability company agreement or trust agreement, as applicable, and any and all other similar agreements, documents and instruments relative to such Person.

**"Other Connection Taxes"** shall mean, with respect to the Agent, any Lender, the Issuing Lender or any other recipient of any payment to be made by or on account of an Obligor hereunder or under any other Loan Document, Taxes imposed as a result of a present or former connection between such person and the jurisdiction imposing such Tax (other than connections arising from such person having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to this Agreement or enforced this Agreement or any other Loan Document).

**"Other Taxes"** means all present or future stamp, court or documentary, intangible, recording, filing or similar taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery, performance, registration or enforcement of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement or any other Loan Document.

**"Participant"** shall have the meaning ascribed to such term in Section 16.4.

**“PBGC”** means the Pension Benefit Guaranty Corporation or any Person succeeding to any or all of its functions under ERISA.

**“Permitted Acquisition”** means an Acquisition complying with the terms and provisions provided for in Section 10.4(i).

**“Permitted Debt”** means:

- (a) Debt under this Agreement;
- (b) Debt in respect of Purchase Money Security Interests and Capital Leases in an outstanding amount not to exceed \$2,000,000 in the aggregate at any time;
- (c) Permitted Intercompany Debt;
- (d) Shareholder Subordinated Debt;
- (e) the TQ Debt;
- (f) Qualifying Hedge Arrangements;
- (g) Earn Out Obligations in connection with Permitted Acquisitions;
- (h) Debt of the Borrower owed under any credit card facility provided by BNS to the Borrower;
- (i) the Subordinated Debt provided that such Debt is subject to the provisions of the Intercreditor Agreement;
- (j) accrued Shareholder Backstop Fee; and
- (k) Debt consented to in writing by the Lenders from time to time.

**“Permitted Disposition”** means (a) the Disposition of inventory in the ordinary course of business, (b) Dispositions of worn-out or obsolete equipment in the ordinary course of business, (c) Dispositions of Property between Obligors, (d) other Dispositions by Obligors to non-Obligors to the extent that no Default or Event of Default exists and (x) the fair market value of the assets Disposed of by all Obligors pursuant to this clause (d) does not exceed \$1,000,000 in the aggregate during any Fiscal Year, or (y) the Disposition is of underutilized equipment in the ordinary course of business, and (e) Dispositions pursuant to the Receivables Purchase Agreement.

**“Permitted Distributions”** means:

- (a) Distributions paid by an Obligor to another Obligor;
- (b) payments made on Permitted Intercompany Debt, provided after (i) firstly, the first Advance under, and until the repayment of, the Revolving D Facility and (ii) secondly, the first Advance under, and until repayment of, the Revolving C Facility, no payments shall be made on Permitted Intercompany Debt other than



as may be required to facilitate ordinary course cash management among the Obligor in accordance with past practices;

- (c) subject to compliance with the terms of the applicable Subordination Agreement, interest payments on Shareholder Subordinated Debt;
- (d) subsequent to June 30, 2025, Distributions to Holdco for the specific purpose of enabling Holdco to repurchase or redeem Equity Interests or Debt of Holdco held by an employee or director of an Obligor (or his or her holding vehicle) upon the termination, resignation, retirement, death or permanent disability of such Person in an aggregate annual amount not to exceed \$2,000,000 in any Fiscal Year (pro-rated for any partial Fiscal Year), provided that no such Distributions may be made if there exists a Default or Event of Default or if the making of such payment would result in the occurrence of a Default or an Event of Default (including without limitation the financial covenants set out in Section 10.2);
- (e) provided that no Default or Event of Default exists or would occur after giving effect to such payment, payment of Earn Out Obligations which have become due;
- (f) Management Fees paid by the Borrower to TorQuest and director fees of the Borrower in an aggregate annual amount not to exceed \$750,000 in any Fiscal Year (pro-rated for any partial Fiscal Year), provided that no such payments may be made if there exists a Default or Event of Default or if the making of such payment would result in the occurrence of a Default or an Event of Default (including without limitation the financial covenants set out in Section 10.2). Until June 30, 2025, no Management Fees may be paid and only independent director fees may be paid subject to an amount not to exceed \$350,000 in any Fiscal Year;
- (g) payments in connection with the Subordinated Debt in accordance with the provisions of the Intercreditor Agreement;
- (h) payments in respect of Shareholder Subordinated Debt to the extent made exclusively with the proceeds of Excluded Issuances made prior to September 1, 2024; and
- (i) payments pursuant to a Shareholder Backstop Fee Payment Transaction, provided that there exists no Event of Default and all steps thereof are completed on the same Business Day.

**“Permitted Encumbrances”** means, with respect to any Person, the following:

- (a) Encumbrances for Taxes, assessments and other governmental charges or levies not yet due or for which installments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person and in respect of which reasonable reserves under GAAP are maintained;
- (b) undetermined or inchoate liens, rights of distress and charges incidental to current operations which have not at such time been filed or exercised and of

which none of the Lenders has been given notice, or which relate to obligations not due or payable, or the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person;

- (c) reservations, limitations, provisos and conditions expressed in any original grants from the Crown or other grants of real or immovable property, or interests therein, which do not materially affect the use of the affected land for the purpose for which it is used by that Person;
- (d) zoning, land use and building restrictions, survey exceptions, by-laws, regulations and ordinances of federal, provincial, state, municipal and other Governmental Authorities, licences, easements, rights-of-way and rights in the nature of easements (including, without limiting the generality of the foregoing, licences, restrictions, easements, servitudes, rights-of-way and rights in the nature of easements for railways, sidewalks, public ways, sewers, drains, gas, steam and water mains or electric light and power, or telephone and telegraph conduits, poles, wires and cables) which do not materially impair the use of the affected land for the purpose for which it is used by that Person;
- (e) title defects, encroachments or irregularities or other matters relating to title which are of a minor nature and which in the aggregate do not materially impair the use of the affected property for the purpose for which it is used by that Person;
- (f) the right reserved to or vested in any municipality or governmental or other public authority by the terms of any lease, licence, franchise, grant or permit acquired by that Person or by any statutory provision to terminate any such lease, licence, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;
- (g) the Encumbrance resulting from the deposit of cash or securities in connection with contracts, tenders or expropriation proceedings, or to secure workers compensation, employment insurance, performance or surety bonds in the ordinary course of business;
- (h) security given to a public utility or any municipality or Governmental Authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of its business provided that such security does not materially impair the use of the affected property for the purpose for which it is used by that Person;
- (i) liens securing appeal bonds or other similar liens arising in connection with court proceedings (including security for costs of litigation where required by law and letters of credit) or any other instrument serving a similar purpose not to exceed \$1,000,000 in aggregate outstanding at any time;
- (j) the Encumbrance created by a judgment of a court of competent jurisdiction, as long as the judgment is being contested diligently and in good faith by appropriate proceedings or is promptly satisfied by that Person and does not result in an Event of Default;

- (k) Encumbrances imposed by law, such as carriers', repairmen's, warehousemen's and mechanics' liens or other liens arising out of judgments or awards with respect to which an appeal or other proceeding for review is being prosecuted (and as to which any foreclosure or other enforcement proceeding shall have been effectively stayed) not to exceed \$750,000 in aggregate outstanding at any time;
- (l) Encumbrances over assets created by an operating lease;
- (m) Encumbrances arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of combination of accounts or similar rights in the ordinary course of conducting day-to-day banking business in relation to deposit accounts or other funds maintained with a creditor depository institution;
- (n) Encumbrances arising from the right of distress enjoyed by landlords or Encumbrances otherwise granted to landlords (including, without limitation, Encumbrances over rent deposits), in either case, to secure the payment of arrears of rent in respect of leased properties;
- (o) servicing agreements, development agreements, site plan agreements and other agreements with Governmental Authorities pertaining to the use or development of any of the assets of the Person, provided same are complied with in all material respects and do not materially impair the use of such assets in the operation of the business of such Person;
- (p) the Security;
- (q) the TQ Security provided that such Encumbrances are subject to the provisions of the TQ Subordination Agreement;
- (r) the Subordinated Security;
- (s) Purchase Money Security Interests and Capital Leases, provided that such Encumbrances secure Permitted Debt;
- (t) Encumbrances existing as at the Second Closing Date created pursuant to, or arising under, the Receivables Purchase Agreement;
- (u) such other Encumbrances as agreed to in writing by the Majority Lenders in accordance with this Agreement; and
- (v) Encumbrances set forth in Schedule 1.1.

**"Permitted Intercompany Debt"** means Debt owing by one Obligor to another Obligor.

**"Person"** means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

**"Pricing Date"** is defined in the definition of "Applicable Margin".

**"Prime Rate"** means a fluctuating rate of interest per annum, expressed on the basis of a year of three-hundred and sixty-five (365) days or three-hundred and sixty-six (366)

days, which is equal at all times to the greater of (x) base rate of interest (however designated) of the Agent for determining interest chargeable by it on Canadian Dollar commercial loans made in Canada, and (y) Adjusted Term CORRA for an interest period of one (1) month in effect on such day plus 1.00%.

**"Prime Rate Advance"** means an Advance in Canadian Dollars made by the Lenders to the Borrower with respect to which the Borrower has specified that interest is to be calculated by reference to the Prime Rate.

**"Prime Rate Margin"** means, for any period, the percentage rate per annum applicable to that period as indicated below the reference to "Prime Rate Margin" in the pricing grid in the definition of "Applicable Margin".

**"Property"** means, with respect to any Person, all or any portion of its undertaking, property and assets, both real and personal, including for greater certainty any share in the capital of a corporation or ownership interest in any other Person.

**"Proportionate Share"** means in respect of each Lender from time to time, (a) with respect to a Credit Facility or all Credit Facilities, the percentage of each Credit Facility or of all Credit Facilities, as the case may be, which a Lender has agreed to advance to the Borrower, determined by dividing the Lender's Commitment in respect of each Credit Facility or of all Credit Facilities, as the case may be, by the aggregate of all of the Lenders' Commitments with respect to such Credit Facility or all Credit Facilities, as the case may be, and, with respect to an Advance, means the Proportionate Share of the Credit Facility under which such Advance is made in each case net of the Commitment under the Swingline Facility and, (b) with respect to the Obligations, *pro rata* in accordance with the aggregate unpaid amount of the Obligations owed to such Lender, which, in the case of all Qualifying Hedge Arrangements, shall mean all amounts due thereunder including, with respect to all Qualifying Hedge Arrangements (whether or not governed by an ISDA Master Agreement), as a result of a Termination Event (as such term is defined in the ISDA Master Agreement).

**"Purchase Money Security Interest"** means an Encumbrance created or assumed by an Obligor securing Debt incurred to finance the unpaid acquisition price of personal Property (but, for certainty, excluding Equity Interests or in connection with an Acquisition) provided that in each case (i) such Encumbrance is created prior to, or concurrently with, the acquisition of such personal Property, (ii) such Encumbrance does not at any time encumber any Property other than the Property financed or refinanced (to the extent the principal amount is not increased) by such Debt and proceeds thereof, (iii) the amount of Debt secured thereby is not increased subsequent to such acquisition, and (iv) the principal amount of Debt secured by any such Encumbrance at no time exceeds 100% of the original acquisition price of such personal Property at the time it was acquired.

**"QFC"** has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

**"Qualified ECP Obligor"** means, in respect of any Swap Obligation, each Obligor that has total assets exceeding \$10,000,000 at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity

Exchange Act and can cause another person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

**“Qualifying Hedge Arrangements”** means a Hedge Arrangement provided by a Lender or an Affiliate of a Lender and is not speculative.

**“RCRA”** means the *Solid Waste Disposal Act*, as amended by the *Resource Conservation and Recovery Act of 1976* and *Hazardous and Solid Waste Amendments of 1984*, 42 U.S.C. §§6901 et seq., and any future amendments.

**“Receivables Purchase Agreement”** means the receivables purchase agreement between the [REDACTED] Company and JPMorgan Chase Bank, National Association relating to the sale by the Borrower of accounts receivables of the [REDACTED] Company, as amended, modified or supplemented from time to time.

**“Recipient”** has the meaning set forth in the definition of “Excluded Taxes”.

**“Related Parties”** means, with respect to any Person, such Person’s Affiliates and the directors, officers, employees and agents of such Person and of such Person’s Affiliates.

**“Relevant Governmental Body”** means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

**“Relevant Jurisdiction”** means, from time to time, with respect to a Person that is granting Security hereunder, any province or territory of Canada, any state of the United States or any other country, political subdivision thereof, in which such Person has its jurisdiction of formation, chief executive office or chief place of business or has tangible Property (other than Property in transit) and, for greater certainty, at the Fifth Closing Date includes the provinces and states set forth in Schedule 9.1(r) attached hereto.

**“Repayment Notice”** means the notice substantially in the form annexed hereto as Schedule C.

**“Reportable Event”** means any of the events set forth in Section 4043 of ERISA, other than an event for which the provision of notice has been waived.

**“Requirements of Environmental Law”** means all requirements of the common law or of statutes, regulations, by-laws, ordinances, treaties, judgments and decrees, and (to the extent that they have the force of law) rules, guidelines, orders, approvals, notices, permits and directives of any federal, territorial, provincial, state, regional, municipal or local judicial, regulatory or administrative agency, board or governmental authority in Canada the United States and any other jurisdiction in which any Obligor has operations or assets, where such requirements relate to environmental or occupational health and safety matters (as they relate to exposure to a Hazardous Material) and the assets and undertaking of any Obligor and the intended uses thereof, including but not limited to, all such requirements relating to: (a) the protection, preservation or remediation of the natural environment (the air, land, surface water or groundwater); (b) solid, gaseous or

liquid waste generation, handling, treatment, storage, disposal or transportation;  
 (c) occupational safety and health (as they relate to exposure to a Hazardous Material);  
 and (d) the regulation of Hazardous Materials.

**“Requirements of Law”** means, as to any Person, the Organizational Documents of such Person and any Applicable Law, or determination of a Governmental Authority having the force of law (but nevertheless including determinations of a Governmental Authority not having the force of law if responsible and prudent Persons engaged in a business similar to the Business would observe such determinations), in each case applicable to or binding upon such Person or any of its business or Property or to which such Person or any of its business or Property is subject.

**“Restricted Person”** has the meaning set forth in Section 9.1(jj).

**“Revolving Facilities”** means collectively the Revolving Facility, the Revolving B Facility, the Revolving C Facility, and the Revolving D Facility.

**“Revolving Facility”** has the meaning set forth in Section 2.1(a).

**“Revolving B Facility”** has the meaning set forth in Section 2.1(~~a~~b).

**“Revolving C Facility”** has the meaning set forth in Section 2.1(~~a~~c).

**“Revolving D Facility”** has the meaning set forth in Section 2.1(~~a~~d).

**“Revolving Lenders”** means those Lenders designated as such in Schedule A annexed hereto providing the Revolving Facility to the Borrower pursuant to this Agreement, and their successors and permitted assigns.

**“Revolving B Lenders”** means those Lenders designated as such in Schedule A annexed hereto providing the Revolving B Facility to the Borrower pursuant to this Agreement, and their successors and permitted assigns.

**“Revolving C Lenders”** means those Lenders designated as such in Schedule A annexed hereto providing the Revolving C Facility to the Borrower pursuant to this Agreement, and their successors and permitted assigns.

**“Revolving D Lender”** ~~means that Lender~~ Lenders means those Lenders designated as such in Schedule A annexed hereto providing the Revolving D Facility to the Borrower pursuant to this Agreement, and ~~its~~their successors and permitted assigns.

**“Rollover”** means a rollover of a maturing SOFR Advance into a new SOFR Advance.

**“Rollover Date”** means the date of commencement of a new Interest Period applicable to a SOFR Advance that is being rolled over.

**“Rollover Notice”** means the Notice of Request for Advance substantially in the form annexed hereto as Schedule B to be given to the Agent by the Borrower in connection with the Rollover of a SOFR Advance, Term CORRA Advance or Daily Compounded CORRA Advance pursuant to Section 2.6.

**“Sanctioned Entity”** means (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, (d) a Person resident in or determined to be resident in a country, in each case, that is subject to a country sanctions program administered and enforced by OFAC.

**“Sanctioned Person”** means a person named on the list of Specially Designated Nationals maintained by OFAC.

**“Sanction(s)”** means any international economic sanction administered or enforced by the United States Government (including without limitation, OFAC), the Government of Canada, the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

**“Schedule I Lender”** means a bank which is chartered under the *Bank Act* (Canada) and named in Schedule I thereto.

**“Second Closing Date”** means September 20, 2021.

**“Security”** means all security (including guarantees) held from time to time by or on behalf of the Lenders or the Agent on behalf of the Lenders, securing or intended to secure directly or indirectly repayment of the Obligations and includes, without limitation, all security described in Article 11.

**“Security Documents”** means the documents referred to in Article 11.

**“Senior Debt”** means, with respect to the Borrower, without duplication and on a consolidated basis, the sum of all Debt of the Borrower (excluding obligations under Qualifying Hedge Arrangements referred to in clause (j) of the definition of “Debt”, Shareholder Subordinated Debt, the Subordinated Debt and Earn Out Obligations to the extent not due and payable and accrued Shareholder Backstop Fees), less Unrestricted Cash.

**“Senior Debt to EBITDA Ratio”** means, at any time, the ratio of (a) Senior Debt at such time to (b) EBITDA for the most recently completed Four Quarter Period.

**“Service Agreements”** means agreements made between an Obligor and a Lender in respect of cash management, payroll and all other banking services.

**“Shareholder Backstop Fee”** means a fee accruing to shareholders of Holdco that are party to the Shareholder Contribution Agreement, in the maximum amount of 6% per annum on the undrawn balance of the Revolving B Facility, and in the maximum amount of 12% per annum on the drawn balance of the Revolving B Facility.

**“Shareholder Backstop Fee Payment Transaction”** means payment or other settlement of the Shareholder Backstop Fee (i) by way of issuance of Shareholder Subordinated Debt or Equity Interests of the Borrower, (ii) in cash provided that such cash is immediately reinvested either (x) into the Borrower by way of Equity Interests or Shareholder Subordinated Debt, or (y) into Holdco and then by Holdco into the Borrower by way of Equity Interests of Shareholder Subordinated Debt. For certainty, all such Equity Interests of the Borrower shall be pledged in favour of the Agent.

**“Shareholder Contribution Agreement”** means the shareholder contribution agreement provided by TorQuest (and certain other shareholders of Holdco) in favour of the Agent pursuant to which such parties agree, under certain circumstances, to inject funds via Shareholder Subordinated Debt to repay the obligations pursuant to the Revolving B Facility.

**“Shareholder Subordinated Debt”** means debt owing by an Obligor to Holdco or one or more shareholders of Holdco, or any of them, provided that such debt is deeply subordinated and postponed to the Obligations and the Security and pledged to the Agent (with no payments of principal or interest while the Obligations are outstanding other than payments of interest that are re-invested immediately but in any event within two (2) Business Days provided that no such payments may be made should there exist a Default or Event of Default) pursuant to a Subordination Agreement.

**“SOFR”** means a rate equal to the secured overnight financing rate as administered by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

**“SOFR Advance”** means an Advance in United States Dollars made by the Lenders to the Borrower bearing interest based on Adjusted Term SOFR.

**“SOFR Margin”** means, with respect to SOFR Advances, the applicable percentage rate per annum indicated below the reference to “SOFR Margin” in the pricing grid in the definition of “Applicable Margin”.

**“Special Flood Hazard Area”** means, an area that FEMA’s current flood maps indicate has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100 year flood) in any given year or otherwise show the property to be located in a special flood hazard area or have a high or moderate risk of flooding.

**“Specified Default”** has the meaning ascribed to it in the First Amendment to Fourth Amended and Restated Credit Agreement dated September 23, 2024.

**“Subordinated Agent”** means RoyNat Capital Inc., in its capacity as subordinated agent pursuant to the Subordinated Documents.

**“Subordinated Credit Agreement”** means the subordinated credit agreement dated as of March 11, 2024 among the Borrower, the Subordinated Agent and the lenders thereunder from time to time, as such agreement may be further amended, restated, supplemented or replaced from time to time in accordance with this Agreement and the Intercreditor Agreement.

**“Subordinated Debt”** means all indebtedness (being an amount up to \$15,000,000 of principal) owing to the Subordinated Lenders pursuant to the Subordinated Credit Agreement.

**“Subordinated Documents”** means the Subordinated Credit Agreement, the Subordinated Security and all other material documents executed in connection with the Subordinated Debt.



**“Subordinated Lenders”** means those lenders pursuant to the Subordinated Credit Agreement and their successors and permitted assigns.

**“Subordinated Security”** means the guarantees and security delivered by the Obligors to the Subordinated Agent as permitted pursuant to the terms of the Intercreditor Agreement.

**“Subordination Agreement”** means a subordination and postponement agreement from each holder of Shareholder Subordinated Debt in favour of the Agent, in form and substance satisfactory to the Agent.

**“Subsidiary”** means, at any time, as to any Person, any other Person, if at such time the first mentioned Person owns, directly or indirectly, securities or other ownership interests in such other Person (x) having ordinary voting power to elect a majority of the board of directors or persons performing similar functions for such other Person or (y) that constitute at least 50.1% of the issued and outstanding Equity Interests of such Person, and shall, in each case, include any other Person in like relationship to a Subsidiary of such first mentioned Person.

**“Swap Obligation”** means, with respect to any Guarantor (or the Borrower with respect to the obligations of any other Obligor under any Hedge Arrangement), any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

**“Swingline Commitment”** means \$2,000,000.

**“Swingline Facility”** has the meaning set forth in Section 2.2(a).

**“Swingline Lender”** means BNS.

**“Swingline Loan”** has the meaning set forth in Section 2.2(b).

**“Take-Over Bid”** shall mean either (a) an offer to acquire outstanding voting or equity securities of a class of a Person whose shares are publicly traded where the securities that are the subject of such offer, together with the offeror’s securities, constitute at least 20% of the outstanding securities of that class of securities on the date the offer is made, or (b) any other event which is a take-over bid within the meaning attributed to such term by any law, treaty, rule, regulation, or requirement of any stock exchange or securities commission, or determination of any arbitrator, court, stock exchange, securities commission or other Governmental Authority, in each case, applicable to or binding on any Obligor.

**“Taxes”** means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

**“Term CORRA Administrator”** means Candéal Benchmark Administration Services Inc., TSX Inc., or any successor administrator.

**“Term CORRA Adjustment”** means, with respect to Term CORRA, for a CORRA Interest Period of a duration of (a) one-month, a percentage equal to 0.29547%, and (b) three-months, a percentage equal to 0.32138%).

**“Term CORRA Advance”** means an Advance that bears interest at a rate based on Adjusted Term CORRA.

**“Term CORRA”** means, for any calculation with respect to a Term CORRA Advance, the Term CORRA Reference Rate for a tenor comparable to the applicable CORRA Interest Period on the day (such day, the **“Periodic Term CORRA Determination Day”**) that is two (2) Business Days prior to the first (1st) day of such CORRA Interest Period, as such rate is published by the Term CORRA Administrator; provided, however, that if as of 1:00 p.m. (Toronto time) on any Periodic Term CORRA Determination Day the Term CORRA Reference Rate for the applicable tenor has not been published by the Term CORRA Administrator and a Benchmark Replacement Date with respect to the Term CORRA Reference Rate has not occurred, then Term CORRA will be the Term CORRA Reference Rate for such tenor as published by the Term CORRA Administrator on the first (1st) preceding Business Day for which such Term CORRA Reference Rate for such tenor was published by the Term CORRA Administrator so long as such first preceding Business Day is not more than three (3) Business Days prior to such Periodic Term CORRA Determination Day; provided, further, that if Term CORRA shall ever be less than the Floor, then Term CORRA shall be deemed to be the Floor.

**“Term CORRA Margin”** means, with respect to Term CORRA Advances, the applicable percentage rate per annum indicated below the references to “Term CORRA Margin” in the pricing grid in the definition of “Applicable Margin”.

**“Term CORRA Reference Rate”** means the forward looking term rate based on CORRA.

**“Term Facility”** has the meaning set forth in Section 2.1([ee](#)). |

**“Term Lenders”** means those Lenders designated as such in Schedule A annexed hereto providing the Term Facility to the Borrower pursuant to this Agreement, and their successors and permitted assigns.

**“Term SOFR”** means, for the applicable tenor, the Term SOFR Reference Rate on the day (such day, the **“Term SOFR Determination Day”**) that is two (2) US Government Securities Business Days prior to the first (1st) day of such applicable Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding US Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding US Government Securities Business Day is not more than three (3) US Government Securities Business Days prior to such Term SOFR Determination Day.

**“Term SOFR Administrator”** means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Agent in its reasonable discretion).

**“Term SOFR Reference Rate”** means the per annum forward-looking term rate based on SOFR.

**“Third Closing Date”** means January 27, 2023.

**“TorQuest”** means TorQuest Partners Fund IV, L.P., TorQuest Capital Fund IV, L.P. and TorQuest Partners Fund (U.S.) IV, L.P.

**“Total Debt”** means Debt (excluding obligations under Qualifying Hedge Arrangements referred to in clause (j) of the definition of “Debt”, Shareholder Subordinated Debt, the TQ Debt and Earn Out Obligations to the extent not due and payable) less Unrestricted Cash.

**“Total Debt to EBITDA Ratio”** means, at any time, the ratio of (a) Total Debt at such time to (b) EBITDA for the most recently completed Four Quarter Period.

**“TQ Debt”** is defined in Section 3.2(l).

**“TQ Security”** means general security agreements to be granted by the Obligors in favour of Holdco to secure the TQ Debt.

**“TQ Subordination Agreement”** means a Subordination Agreement relating to the TQ Debt and the TQ Security.

**“Unadjusted Benchmark Replacement”** means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

**“Unfunded Capital Expenditures”** shall mean all cash paid Capital Expenditures made by the Borrower that have been paid from the Borrower’s consolidated cash on its balance sheet.

**“United States Bankruptcy Code”** means Title 11 of the United States Code entitled, “Bankruptcy”, as now and hereafter in effect, or any successor statute.

**“United States Dollars”, “US Dollars” and “US \$”** means the lawful money of the United States of America.

**“Unrestricted Cash”** means up to \$5,000,000 of cash and/or Cash Equivalents held by the Obligors in which the Agent has a first priority perfected Encumbrance with such funds being maintained in an account with BNS.

**“US Base Rate”** means a fluctuating rate of interest per annum, expressed on the basis of a year of three-hundred and sixty-five (365) days or three-hundred and sixty-six (366) days, as applicable, which is equal at all times to the greater of (a) the base rate of interest (however designated) of the Agent (or the Swingline Lender in the case of the Swingline Facility) for determining interest chargeable by it on United States Dollar

commercial loans in Canada and (b) the sum of (i) the Federal Funds Effective Rate and (ii) 1.00% per annum.

**"US Base Rate Advance"** means an Advance in United States Dollars made by the Lenders to the Borrower with respect to which the Borrower has specified that interest is to be calculated by a reference to US Base Rate.

**"US Base Rate Margin"** means, for any period, the percentage rate per annum applicable to that period as indicated below the reference to "US Base Rate Margin" in the pricing grid in the definition of "Applicable Margin".

**"US EBITDA"** means EBITDA attributable to the US Facility.

**"US Facility"** means the Borrower's or its Subsidiary's manufacturing facility located at 575 Research Drive, Pittston, PA 18640, United States, United States of America.

**"US Government Securities Business Day"** means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

**"US Obligor"** means any Obligor existing pursuant to the laws of any State of the United States of America.

**"US Pension Plan"** means any employee pension benefit plan covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the IRC (other than a Multiemployer Plan) that either (i) is maintained or, within the preceding five years, has been maintained, by the Obligors or any member of the Obligors' Controlled Group, or (ii) with respect to which an Obligor has or would reasonably be expected to have liability (including on account of its membership in a Controlled Group).

**"[REDACTED] Carton Line #6"** means the line identified as such in Exhibit I.

**"[REDACTED] Contract"** means the contract to be entered into between one or more Obligors and [REDACTED] and/or its affiliates.

**"Welfare Plan"** means an employee welfare plan within the meaning of Section 3(1) of ERISA that is applicable to employees of an Obligor resident in the United States of America.

**"Withholding Agent"** means any Obligor or the Agent, as applicable.

## 1.2 Headings

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## 1.3 Accounting Practices

All accounting terms not specifically defined in this Agreement shall be interpreted in accordance with GAAP. If any accounting changes occur and such changes

result in a material change in the calculation of the financial covenants, standards or terms used in this Agreement, then the Borrower, the Agent and the Lenders agree to enter into negotiations in order to amend such provisions of this Agreement, so as to equitably reflect such accounting changes with the desired result that the criteria for evaluating the applicable Obligor's financial condition shall be the same after such accounting changes as if such accounting changes had not been made; provided, however, that the agreement of the Majority Lenders to any required amendments of such provisions shall be sufficient to bind all Lenders. If the Borrower and the Majority Lenders agree upon the required amendments, then after appropriate amendments have been executed and the underlying accounting change with respect thereto has been implemented, any reference to GAAP contained in this Agreement or in any other Loan Document shall, only to the extent of such accounting change, refer to GAAP, consistently applied after giving effect to the implementation of such accounting change. If the Borrower and the Majority Lenders cannot agree upon the required amendments within thirty (30) days following the date of implementation of any accounting change, then all calculations of financial covenants and other standards and terms in this Agreement and the other Loan Documents shall continue to be prepared, delivered and made without regard to the underlying accounting change. In such case, the Borrower shall, in connection with the delivery of any financial statements under this Agreement, provide a management prepared reconciliation of the financial covenants to such financial statements in light of such accounting changes.

#### **1.4            Permitted Encumbrances**

The inclusion of reference to Permitted Encumbrances in any Loan Document is not intended to subordinate and shall not subordinate, and shall not be interpreted as subordinating, any Encumbrance created by any of the Security to any Permitted Encumbrance.

#### **1.5            Currency**

Unless otherwise specified in this Agreement, all references to dollar amounts (without further description) will mean Canadian Dollars.

#### **1.6            Paramountcy**

In the event of a conflict in or between the provisions of this Agreement and the provisions of any Schedule annexed hereto or any of the other Loan Documents then, notwithstanding anything contained in such Schedule or other Loan Document, the provisions of this Agreement will prevail and the provisions of such Schedule or other Loan Document will be deemed to be amended to the extent necessary to eliminate such conflict. In particular, if any act or omission of an Obligor is expressly permitted under this Agreement but is expressly prohibited under any Schedule annexed hereto or another Loan Document, such act or omission shall be permitted. If any act or omission is expressly prohibited under any Schedule annexed hereto or a Loan Document (other than this Agreement), but this Agreement does not expressly permit such act or omission, or if any act is expressly required to be performed under such Schedule or such Loan Document but this Agreement does not expressly relieve the applicable Obligor from such performance, such circumstance shall not constitute a conflict in or between the provisions of this Agreement and the provisions of such Schedule or Loan Document.

## **1.7            Non-Business Days**

Unless otherwise expressly provided in this Agreement, whenever any payment is stated to be due on a day other than a Business Day, the payment will be made on the immediately following Business Day. Notwithstanding the foregoing, if with respect to any payment of principal or interest on a SOFR Advance the succeeding Business Day falls in the next calendar month, the due date for payment of such principal or interest shall be the next preceding Business Day. Unless otherwise expressly provided in this Agreement, whenever any action to be taken is stated or scheduled to be required to be taken on, or (except with respect to the calculation of interest or fees) any period of time is stated or scheduled to commence or terminate on, a day other than a Business Day, the action will be taken or the period of time will commence or terminate, as the case may be, on the immediately following Business Day.

## **1.8            Interest Payments and Calculations**

(a) All interest payments to be made under this Agreement will be paid without allowance or deduction for deemed re-investment or otherwise, both before and after maturity and before and after default and/or judgment, if any, until payment of the amount on which such interest is accruing, and interest will accrue on overdue interest, if any.

(b) Unless otherwise stated, wherever in this Agreement reference is made to a rate of interest or rate of fees "per annum" or a similar expression is used, such interest or fees will be calculated on the basis of a calendar year of three-hundred and sixty-five (365) days or three-hundred and sixty-six (366) days, as the case may be, and using the nominal rate method of calculation, and will not be calculated using the effective rate method of calculation or on any other basis that gives effect to the principle of deemed re-investment of interest.

(c) For the purposes of the *Interest Act* (Canada) and disclosure under such Act, whenever interest to be paid under this Agreement is to be calculated on the basis of a year of three-hundred and sixty-five (365) days or any other period of time that is less than a calendar year, the yearly rate of interest to which the rate determined pursuant to such calculation is equivalent is the rate so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by either 365 or such other period of time, as the case may be.

(d) Unless expressly agreed otherwise under this Agreement, the Agent shall calculate all fees and interest, including without limitation standby fees and agency fees. For greater certainty all such calculations shall be without duplication of any day such that neither interest nor fees shall be calculated in respect of the same day twice.

(e) Notwithstanding anything herein to the contrary, in no event shall any interest rate or rates referred to herein (together with other fees payable hereunder which are construed by a court of competent jurisdiction to be interest or in the nature of interest) exceed the maximum interest rate permitted by Applicable Law. If such maximum interest rate would be exceeded by the terms hereof, the rates of interest payable hereunder shall be reduced to the extent necessary so that such rates (together with other fees which are construed by a court of competent jurisdiction to be interest or in the nature of interest) equal the maximum interest rate permitted by Applicable Law, and any overpayment of interest received by the Agent or the Lenders theretofore shall be applied, forthwith after determination of such overpayment, to pay

all then outstanding interest, and thereafter to pay outstanding principal, as if the same were a prepayment of principal and treated accordingly hereunder.

### **1.9 Determinations By the Borrower**

All provisions contained herein requiring the Borrower to make a determination or assessment of any event or circumstance or other matter to the best of its knowledge shall be deemed to require the Borrower to make all inquiries and investigations as may be reasonable in the circumstances before making any such determination or assessment.

### **1.10 Terms Generally**

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein (including this Agreement) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented, restated or otherwise modified (subject to any restrictions on such amendments, supplements, restatements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and permitted assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) unless otherwise expressly stated, all references in this Agreement to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (f) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

### **1.11 Acknowledgement Regarding Any Supported QFCs**

(a) To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Hedge Arrangement/Swap or any other agreement or instrument that is a QFC (such support, “**QFC Credit Support**”, and each such QFC, a “**Supported QFC**”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the *Federal Deposit Insurance Act* and Title II of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(b) In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any

rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Credit Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Non-Funding Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

## **1.12 Interest Rates**

The Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the US Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, Prime Rate, Term CORRA, Daily Compounded CORRA, Adjusted Daily Compounded CORRA or Adjusted Term CORRA, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement or CORRA Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement or CORRA Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, US Base Rate, Prime Rate, Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, Term CORRA, Daily Compounded CORRA, Adjusted Daily Compounded CORRA, Adjusted Term CORRA or any other CORRA Benchmark or Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes or CORRA Conforming Changes. The Agent and its affiliates or other related entities may engage in transactions that affect the calculation of US Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, the CORRA Benchmark, Prime Rate, Term CORRA, Daily Compounded CORRA, Adjusted Term CORRA, Adjusted Daily Compounded CORRA or any alternative, successor or replacement rate (including any CORRA Benchmark Replacement or Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Agent may select information sources or services in its reasonable discretion to ascertain the US Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, Prime Rate, Term CORRA, Daily Compounded CORRA, Adjusted Daily Compounded CORRA, Adjusted Term CORRA or any other Benchmark or CORRA Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.



### 1.13 Schedules

The following are the Schedules annexed hereto and incorporated by reference and deemed to be part hereof:

Schedule A	–	Lenders and Commitments
Schedule B	–	Notice of Request for Advance
Schedule C	–	Repayment Notice
Schedule D	–	Compliance Certificate
Schedule E	–	Guarantors/Obligors on Fifth Closing Date
Schedule F	–	Assignment and Assumption
Schedule G	–	Loan Pricing Corporation Information
Schedule 1.1	–	Permitted Encumbrances
Schedule 9.1(i)	–	Litigation
Schedule 9.1(l)	–	Description of Real Property
Schedule 9.1(m)	–	Insurance Policies
Schedule 9.1(n)	–	Labour Relations
Schedule 9.1(q)	–	Corporate Structure
Schedule 9.1(r)	–	Relevant Jurisdictions
Schedule 9.1(s)	–	Intellectual Property
Schedule 9.1(t)	–	Material Contracts and Material Licences
Schedule 9.1(aa)	–	Non-Arm's Length Transactions
Exhibit I	–	Lines

## ARTICLE 2

### THE CREDIT FACILITIES

#### 2.1 Credit Facilities

Subject to the terms and conditions of this Agreement:

- (a) Revolving Facility – the Revolving Lenders establish (on a several and not joint or joint and several basis) in favour of the Borrower a revolving credit facility (the “**Revolving Facility**”) in an amount (including Advances made in Canadian Dollars and the Equivalent Amount in Canadian Dollars of Advances made in United States Dollars) equal to the Aggregate Revolving Commitment which, as of the date hereof, is \$15,000,000. For certainty, all Advances outstanding under the Revolving Facility prior to the Fifth Closing Date shall continue to be outstanding on the Fifth Closing Date.

The Revolving Facility shall include a swingline facility in an amount (including Advances made in Canadian Dollars and the Equivalent Amount in Canadian Dollars of Advances made in United States Dollars) equal to the Swingline Commitment to be made available by the Swingline Lender to the Borrower pursuant to the Swingline Facility.

- (b) Revolving B Facility – the Revolving B Lenders establish (on a several and not joint or joint and several basis) in favour of the Borrower a revolving credit facility

(the “**Revolving B Facility**”) in an amount (including Advances made in Canadian Dollars and the Equivalent Amount in Canadian Dollars of Advances made in United States Dollars) equal to the Aggregate Revolving Commitment which, as of the date hereof, is \$15,000,000. For certainty, all Advances outstanding under the Revolving B Facility prior to the Fifth Closing Date shall continue to be outstanding on the Fifth Closing Date.

- (c) Revolving C Facility – the Revolving C Lenders establish (on a several and not joint or joint and several basis) in favour of the Borrower a revolving demand credit facility (the “**Revolving C Facility**”) in an amount (including Advances made in Canadian Dollars and the Equivalent Amount in Canadian Dollars of Advances made in United States Dollars) equal to ~~\$10,000,000~~ 13,000,000 which may be terminated by the Agent at any time at its sole and unfettered discretion upon the Agent providing the Borrower with five (5) Business Days’ (the “**Termination Notice Period**”) prior written notice of termination (a “**Termination Notice**”). Except as contemplated in the immediately subsequent sentence, the Agent and the Lenders will have no obligations to make Advances and the facility shall be deemed terminated after the expiry of the Termination Notice Period and the Borrower and each Obligor hereby acknowledge and agree that the Termination Notice Period constitutes reasonable notice of termination and each Obligor hereby waives any and all rights to assert otherwise. During the Termination Notice Period, the Borrower may only submit one (1) Drawdown Notice to the Agent requesting a Drawdown under the Revolving C Facility for a Prime Rate Advance in an amount that does not exceed the maximum amount permitted pursuant to Section 2.6(k) less the amount of forecasted disbursements in the immediately following week that have already been paid, if any, or which can be satisfied from cash on hand as determined by the Borrower in consultation with the Agent, each acting reasonably. Notwithstanding anything in this Agreement, including the occurrence or pendency of any Event of Default, upon receipt of the Drawdown Notice referred to in the previous sentence, the Lenders will make an Advance to the Borrower in the amount specified therein, provided such amount does not exceed the maximum amount permitted hereunder. Notwithstanding anything in this Agreement, the Borrower hereby acknowledges and agrees that any Advance under Revolving C Facility in excess of \$8,000,000 shall be subject to the approval of the Agent in its sole and absolute discretion. For greater certainty, the Agent will not be required to have issued a Termination Notice to refuse to permit Advances above \$8,000,000 under the Revolving C Facility.
- (d) Revolving D Facility – the Revolving D ~~Lender establishes~~ Lenders establish (on a several and not joint or joint and several basis) in favour of the Borrower a revolving demand credit facility (the “**Revolving D Facility**”) in an amount (including Advances made in Canadian Dollars and the Equivalent Amount in Canadian Dollars of Advances made in United States Dollars) equal to \$4,000,000.
- (e) Term Facility – the Term Lenders established on the Closing Date in favour of the Borrower a non-revolving term loan facility (the “**Term Facility**”) in an amount of \$18,000,000. As of the Fifth Closing Date, \$18,000,000 remains outstanding pursuant to the Term Facility.

- (f) Delayed Draw Facility – the Delayed Draw Lenders established on the Fourth Closing Date in favour of the Borrower a non-revolving term loan facility (the “**Delayed Draw Facility**”) in an amount of US\$78,091,942. As of the Fifth Closing Date, \$78,091,942 remains outstanding pursuant to the Delayed Draw Facility and no amount remains available to be borrowed.

## 2.2 Swingline Facility

(a) Subject to the terms and conditions of this Agreement, the Swingline Lender establishes in favour of the Borrower a revolving credit facility which is part of the Revolving Facility in an amount (including Advances made in Canadian Dollars and the Equivalent Amount in Canadian Dollars of Advances made in United States Dollars) equal to the Swingline Commitment on the terms set forth in this Section 2.2 (the “**Swingline Facility**”).

(b) At any time that the Borrower would be entitled to obtain Prime Rate Advances and US Base Rate Advances, as the case may be, under the Revolving Facility, the Borrower shall be entitled to draw cheques on its Cdn. Dollar chequing account and US Dollar chequing account, as the case may be, maintained from time to time with the Swingline Lender at the Agent's Payment Branch (or in such other accounts with the Swingline Lender at such other branch of the Swingline Lender as may be agreed upon by the Swingline Lender and the Borrower from time to time). The debit balance from time to time in any such Canadian Dollar account shall be deemed to be a Prime Rate Advance outstanding to the Borrower from the Swingline Lender under the Revolving Facility. The debit balance from time to time in any such US Dollar account shall be deemed to be a US Base Rate Advance outstanding to the Borrower from the Swingline Lender under the Revolving Facility. If at any time the Borrower is a party to a cash concentration arrangement with the Swingline Lender, the amount of any overdraft from time to time in the Cdn. Dollar or US Dollar concentration account, as the case may be, of the Borrower established pursuant to such arrangement (which for greater certainty may include one of the Cdn. Dollar or US Dollar accounts identified above) shall, without duplication, be deemed to be a Prime Rate Advance or US Base Rate Advance, as the case may be, outstanding to the Borrower from the Swingline Lender under the Revolving Facility. A Prime Rate Advance or a US Base Rate Advance from the Swingline Lender as contemplated by this subsection, prior to such time as such Advance is repaid as contemplated by Section 2.2(d) or purchased as contemplated by Section 2.2(e), is referred to as a “**Swingline Loan**”.

(c) The outstanding amount (including Advances made in Canadian Dollars and the Equivalent Amount in Canadian Dollars of Advances made in United States Dollars) of all Swingline Loans at any time shall not exceed the lesser of:

- (i) the Swingline Commitment; and
- (ii) the amount, if any, by which:
  - (A) the Aggregate Revolving Commitment at such time; exceeds
  - (B) the amount (including Advances made in Canadian Dollars and the Equivalent Amount in Canadian Dollars of Advances made in

United States Dollars) of all Advances (other than Swingline Loans) outstanding at such time under the Revolving Facility.

(d) The Swingline Lender may (but shall not be obliged to) deliver a written notice to the Agent (which shall thereupon deliver a similar notice to each of the Revolving Lenders) and to the Borrower, or the Agent may itself (but shall not be obliged to) deliver a written notice to each of the Revolving Lenders and to the Borrower requiring repayment of the Swingline Loans from time to time. The Borrower shall be deemed to have given at such time a Drawdown Notice to the Agent requesting Prime Rate Advances and US Base Rate Advances, as applicable, under the Revolving Facility in an aggregate amount equal to the amount of such Swingline Loans and subject to the provisions of Section 2.6(h). The Revolving Lenders shall thereupon (irrespective of whether any condition precedent to an Advance has been satisfied, whether the amount of such Advance to be made available under the Revolving Facility is less than, equal to or more than the minimum amount, if any, of an Advance required to be included in an Advance constituting such type of Advance under this Agreement, whether any Default or Event of Default has occurred or is continuing or whether any acceleration or enforcement action (including any termination of the Credit Facilities and the Commitments) has occurred or commenced under any of the Loan Documents or otherwise or whether the Maturity Date has occurred) make such Prime Rate Advance and US Base Rate Advance, as applicable, under the Revolving Facility and the Agent shall apply the proceeds thereof in repayment of such Swingline Loans. The Agent shall promptly notify the Borrower of any such Prime Rate Advances and US Base Rate Advances, and the Borrower agrees to accept each such Prime Rate Advance and US Base Rate Advance under the Revolving Facility and hereby irrevocably authorizes and directs the Agent to apply the proceeds thereof in payment of the applicable Swingline Loan.

(e) Without limiting Section 2.2(d), on the Maturity Date, or if an Event of Default has occurred and is continuing, each of the Revolving Lenders agrees that it will purchase from the Swingline Lender, and the Swingline Lender agrees that it shall sell to such Revolving Lenders, for cash, at par, without representation or warranty from or recourse against the Swingline Lender (and irrespective of whether any condition precedent to an Advance has been satisfied, any Default or Event of Default has occurred or is continuing or whether any acceleration or enforcement action (including any termination of the Credit Facilities and the Commitments) has occurred or been commenced under any of the Loan Documents or otherwise or whether the Maturity Date has occurred), on a rateable basis, an undivided interest in all Swingline Loans then outstanding. The Agent, upon consultation with the applicable Lenders, shall have the power to settle any documentation required to evidence any such purchase and, if deemed advisable by the Agent, to execute any document as attorney for any Lender in order to complete any such purchase. The Borrower and the Revolving Lenders acknowledge that the foregoing arrangements are to be settled by the Revolving Lenders among themselves, and the Borrower expressly consents to the foregoing arrangements among such Lenders.

### **2.3 Purpose of Credit Facilities**

Advances under the Credit Facilities shall only be used for the following respective purposes:

- (a) Advances under the Revolving Facility and the Swingline Facility shall only be used by the Borrower for working capital and other general corporate purposes;

- (b) Advances under the Term Facility were used by the Borrower to partially finance the Joriki Acquisition and to pay related fees and expenses;
- (c) Advances under the Delayed Draw Facility were used by the Borrower to finance expansion related Capital Expenditures and start up costs at the US Facility ("**US Facility Expenditures**") and to finance the Borrower's US expansion and Capital Expenditures and start up costs related to the [REDACTED] Contract and the [REDACTED] Contract. The Borrower was also permitted to use the Delayed Draw Facility to refinance Advances under the Revolving Facility used for US Facility Expenditures;
- (d) The Advance under the Revolving B Facility on the Fourth Closing Date was used by the Borrower to finance US Facility Expenditures and thereafter Advances under the Revolving B Facility shall only be used by the Borrower for working capital and other general corporate purposes;
- (e) Advances under the Revolving C Facility shall only be used by the Borrower for working capital and other general corporate purposes in accordance with the Initial Cash Flow Forecast or the Cash Flow Forecast, as applicable, or as otherwise agreed to by the Revolving C Lenders; and
- (f) Advances under the Revolving D Facility shall only be used by the Borrower for working capital and other general corporate purposes in accordance with the Cash Flow Forecast, or as otherwise agreed to by the Revolving D ~~Lender~~Lenders.

## 2.4 Manner of Borrowing

(a) The Borrower may, subject to the terms hereof, make Drawdowns, Conversions and Rollovers as applicable under the Revolving Facility and the Revolving B Facility in Canadian Dollars, by way of Prime Rate Advances, Term CORRA Advances and Daily Compounded CORRA Advances and in United States Dollars, by way of US Base Rate Advances and SOFR Advances and Letters of Credit in Canadian Dollars and US Dollars. The Borrower shall have the option, subject to the terms and conditions hereof, to determine which types of Advances shall be drawn down and in which combinations or proportions.

(b) The Borrower may, subject to the terms hereof, make Drawdowns, Conversions and Rollovers as applicable under the Term Facility by way of Prime Rate Advances, Term CORRA Advances and Daily Compounded CORRA Advances in Canadian Dollars. The Borrower shall have the option, subject to the terms and conditions hereof, to determine which types of Advances shall be drawn down and in which combinations or proportions.

(c) The Borrower may, subject to the terms hereof, make Drawdowns, Conversions and Rollovers as applicable under the Delayed Draw Facility by way of US Base Rate Advances and SOFR Advances in US Dollars. The Borrower shall have the option, subject to the terms and conditions hereof, to determine which types of Advances shall be drawn down and in which combinations or proportions.

(d) The Borrower may make Drawdowns under the Swingline Facility in (i) Canadian Dollars by way of Prime Rate Advances, and (ii) United States Dollars by way of US Base Rate Advances.

(e) Letters of Credit may not exceed an aggregate face value of \$3,000,000 or the Equivalent Amount in US Dollars.

(f) The Borrower may make Drawdowns under the Revolving C Facility in (i) Canadian Dollars by way of Prime Rate Advances, and (ii) United States Dollars by way of US Base Rate Advances.

(g) The Borrower may make Drawdowns under the Revolving D Facility in (i) Canadian Dollars by way of Prime Rate Advances, and (ii) United States Dollars by way of US Base Rate Advances.

(h) Notwithstanding the foregoing or anything in this Agreement to the contrary, and for greater certainty, future Drawdowns, Conversions and/or Rollovers under the Credit Facilities shall, at the Lenders' sole and unfettered discretion, be available only in (i) Canadian Dollars by way of Prime Rate Advances, and (ii) United States Dollars by way of US Base Rate Advances, as applicable.

## **2.5 Nature of the Credit Facilities**

(a) Subject to the terms and conditions hereof, each of the Revolving Facility, the Revolving B Facility, the Revolving C Facility, the Revolving D Facility and the Swingline Facility is a revolving credit and, accordingly, the Borrower may increase or decrease Advances under the Revolving Facility and the Swingline Facility by making Drawdowns, repayments and further Drawdowns of the amount of Advances that have been repaid. Subject to the terms contained herein, Advances under the Revolving B Facility shall only be available until August 31, 2024. Any amount not borrowed on August 31, 2024 pursuant to the Revolving B Facility shall thereafter be cancelled and may not thereafter be borrowed by the Borrower. Subject to the terms contained herein, Advances under the Revolving C Facility shall only be available until ~~October 31~~December 16, 2024. Any amount not borrowed on ~~October 31~~December 16, 2024 pursuant to the Revolving C Facility shall thereafter be cancelled and may not thereafter be borrowed by the Borrower. Subject to the terms contained herein, Advances under the Revolving D Facility shall only be available until November 15, 2024. Any amount not borrowed on November 15, 2024 pursuant to the Revolving D Facility shall thereafter be cancelled and may not thereafter be borrowed by the Borrower.

(b) The Term Facility is a non-revolving facility and, accordingly, except for Conversions and Rollovers made in accordance with this Agreement, no amounts repaid under the Term Facility may be reborrowed and the limits of the Term Facility (and the Proportionate Share of the Term Lenders' Commitments under the Term Facility) will be automatically and permanently reduced by the amount of any such repayment so made. Any amount not borrowed by the Borrower on the initial Drawdown under the Term Facility shall be cancelled and may not thereafter be borrowed by the Borrower.

(c) The Delayed Draw Facility is a non-revolving facility and, accordingly, except for Conversions and Rollovers made in accordance with this Agreement, no amounts repaid under the Delayed Draw Facility may be reborrowed and the limits of the Delayed Draw Facility (and the Proportionate Share of the Delayed Draw Lenders' Commitments under the Delayed Draw

Facility) will be automatically and permanently reduced by the amount of any such repayment so made.

## **2.6 Drawdowns, Conversions and Rollovers**

(a) Subject to the provisions of this Agreement, the Borrower may (i) make Drawdowns hereunder; (ii) convert the whole or any part of any type of Advance into any other type of Advance; or (iii) may rollover any Term CORRA Advances or Daily Compounded CORRA Advances or SOFR Advances on the last day of the applicable Interest Period thereof or extend Letters of Credit in accordance with their terms, by giving the Agent a Drawdown Notice, Conversion Notice or Rollover Notice, as the case may be.

(b) In the case of a Drawdown, Conversion or Rollover, the Borrower shall give the Agent a Drawdown Notice, Conversion Notice or Rollover Notice, as the case may be, (i) three (3) Business Days (in the case of SOFR Advances, CORRA Advances and Letters of Credit); and (ii) one (1) Business Day (in the case of all other Advances) prior to the proposed Drawdown Date, Conversion Date or Rollover Date (or CORRA Rollover Date), as the case may be.

(c) Each Drawdown Notice, Conversion Notice or Rollover Notice, as the case may be, shall be delivered by the Borrower on a Business Day on or prior to 11:30 a.m. (Toronto time) to the Agent.

(d) If no CORRA Interest Period is specified with respect to any requested Term CORRA Advance, then the Borrower shall be deemed to have selected a CORRA Interest Period of one month's duration.

(e) The Borrower may roll over any Term CORRA Advance or Daily Compounded CORRA Advance, as applicable, on the last day of the applicable CORRA Interest Period.

(f) If the Borrower fails to deliver a timely notice with respect to a Term CORRA Advance or Daily Compounded CORRA Advance, as applicable, prior to the end of the CORRA Interest Period applicable thereto, then, unless such Advance is repaid as provided herein, at the end of such CORRA Interest Period such Advance shall be converted to a Prime Rate Advance. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Agent, at the request of the Majority Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing, (i) no outstanding Advances may be converted to or continued as a Term CORRA Advance or Daily Compounded CORRA Advance and (ii) unless repaid, each Term CORRA Advance and Daily Compounded CORRA Advance, as applicable, shall be converted to a Prime Rate Advance at the end of the CORRA Interest Period applicable thereto.

(g) If the Borrower specifies in a Rollover Notice or Conversion Notice an effective date for an election made pursuant to such notice that is a day other than the last day of the applicable CORRA Interest Period, the Borrower shall be required to pay to the Lenders Breakage Fees pursuant to Section ~~5.125~~13.

(h) Each Drawdown, Conversion or Rollover under a Credit Facility shall (i) in the case of Prime Rate Advances, be in a minimum principal amount of \$500,000 and whole multiples of \$100,000; (ii) in the case of Term CORRA Advance or Daily Compounded CORRA Advance, be in a minimum face amount of \$500,000 and in whole multiples of \$100,000; (iii) in

the case of US Base Rate Advances, be in a minimum principal amount of US\$1,000,000 and in whole multiples of US\$100,000; and (iv) in the case of SOFR Advances, be in a minimum principal amount of US\$1,000,000 and in whole multiples of US\$100,000.

(i) If the Borrower fails to provide the Agent notice regarding any maturing Term CORRA Advance, Daily Compounded CORRA Advance or SOFR Advance, such Advance shall be converted by the Agent into a Prime Rate Advance or US Base Rate Advance, as applicable.

(j) The provisions of this Section 2.6 do not apply to Swingline Loans.

(k) Notwithstanding anything contained in this Section 2.6 or elsewhere in the Agreement to the contrary, Advances requested under the Revolving C Facility and Revolving D Facility in any calendar week shall not exceed the maximum amount forecasted to be advanced under the Revolving C Facility and Revolving D Facility through the immediately following calendar week under and in accordance with the Initial Cash Flow Forecast and Cash Flow Forecast, as applicable.

## **2.7 Agent's Obligations with Respect to Advances**

Upon receipt of a Drawdown Notice, Conversion Notice or Rollover Notice, as the case may be, the Agent shall forthwith notify the Lenders of the proposed Drawdown Date, Conversion Date or Rollover Date, as the case may be, of each Lender's Proportionate Share of such Advance and, if applicable, the account of the Agent to which each Lender's Proportionate Share is to be credited.

## **2.8 Lenders' and Agent's Obligations with Respect to Advances**

Each Lender shall, prior to noon (Toronto time) on the Drawdown Date, Conversion Date or Rollover Date, as the case may be, specified by the Borrower in a Drawdown Notice, Conversion Notice or Rollover Notice, as the case may be, credit the Agent's account specified in the Agent's notice given under Section 2.7 with such Lender's Proportionate Share of such Advance and by noon (Toronto time) on the same date the Agent shall make available the full amount of the amounts so credited to the Borrower. Notwithstanding the foregoing, the Lenders shall have no obligation to issue a Letter of Credit, but may decide to do so from the availments of Revolving C Facility in its sole and unfettered discretion.

## **2.9 Irrevocability**

A Drawdown Notice, Conversion Notice or Rollover Notice, as the case may be, given by the Borrower hereunder shall be irrevocable and shall oblige the Borrower to take the action contemplated on the date specified therein.

## **2.10 Cancellation or Permanent Reduction of the Revolving Facility, Revolving B Facility, Revolving C Facility, and Revolving D Facility**

(a) The Borrower may, at any time, upon giving at least three (3) Business Days' prior notice to the Agent, cancel in full or, from time to time, permanently reduce in whole or in part the Revolving Facility, the Revolving B Facility, the Revolving C Facility or the Revolving D



Facility; provided, however that any reduction shall be in a minimum amount of \$500,000 and increments of \$100,000 thereafter.

(b) If a Credit Facility is so reduced, the Commitments of each of the applicable Lenders shall be reduced *pro rata* in the same proportion that the amount of the reduction in such Credit Facility bears to the then current Commitments of the applicable Lenders in effect immediately prior to such reduction.

(c) Notwithstanding subsections (a) and (b) of this Section 2.10, the Borrower shall permanently repay in full the Revolving D Facility prior to permanently reducing in whole or in part the Revolving Facility, the Revolving B Facility, or the Revolving C Facility.

## **2.11 CORRA Benchmark Replacement Setting**

(a) Benchmark Replacement Notwithstanding anything to the contrary herein or in any other Loan Document, if a CORRA Benchmark Transition Event and its related CORRA Benchmark Replacement Date have occurred prior any setting of the then-current CORRA Benchmark, then (x) if a CORRA Benchmark Replacement is determined in accordance with clause (a) of the definition of "CORRA Benchmark Replacement" for such CORRA Benchmark Replacement Date, such CORRA Benchmark Replacement will replace such CORRA Benchmark for all purposes hereunder and under any Loan Document in respect of such CORRA Benchmark setting and subsequent CORRA Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a CORRA Benchmark Replacement is determined in accordance with clause (b) of the definition of "CORRA Benchmark Replacement" for such CORRA Benchmark Replacement Date, such CORRA Benchmark Replacement will replace such CORRA Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (Toronto time) on the fifth (5th) Business Day after the date notice of such CORRA Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as Agent has not received, by such time, written notice of objection to such CORRA Benchmark Replacement from Lenders comprising the Majority Lenders. If the CORRA Benchmark Replacement is Adjusted Daily Compounded CORRA, all interest payments will be payable on the last day of each CORRA Interest Period.

No Swap Agreement shall be deemed to be a "Loan Document" for purposes of this Section 2.11.

(b) CORRA Benchmark Replacement Conforming Changes In connection with the use, administration, adoption or implementation of a CORRA Benchmark Replacement, the Agent will have the right to make CORRA Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such CORRA Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(c) Notices; Standards for Decisions and Determinations The Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any CORRA Benchmark Replacement and (ii) the effectiveness of any CORRA Conforming Changes in connection with the use, administration, adoption or implementation of a CORRA Benchmark Replacement. The Agent will notify the Borrower of (x) the removal or reinstatement of any tenor of a CORRA Benchmark pursuant to Section 2.11(b) and (y) the commencement of any CORRA Benchmark

Unavailability Period. Any determination, decision or election that may be made by the Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.11 including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.11.

(d) Unavailability of Tenor of Benchmark Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a CORRA Benchmark Replacement), (i) if the then-current CORRA Benchmark is a term rate (including Term CORRA) and either (A) any tenor for such CORRA Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such CORRA Benchmark has provided a public statement or publication of information announcing that any tenor for such CORRA Benchmark is not or will not be representative, then the Agent may modify the definition of "CORRA Interest Period" (or any similar or analogous definition) for any CORRA Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a CORRA Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a CORRA Benchmark (including a Benchmark Replacement), then the Agent may modify the definition of "CORRA Interest Period" (or any similar or analogous definition) for all CORRA Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) Benchmark Unavailability Period Upon the Borrower's receipt of notice of the commencement of a CORRA Benchmark Unavailability Period, the Borrower may revoke any pending request for an Advance of, conversion to or continuation of Advances, which are of the type that have a rate of interest determined by reference to the then-current CORRA Benchmark, to be made, converted or continued during any CORRA Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for an Advance of or conversion to, (i) for a CORRA Benchmark Unavailability Period in respect of Term CORRA, Daily Compounded CORRA Advances, and (ii) for a CORRA Benchmark Unavailability Period in respect of a CORRA Benchmark other than Term CORRA, Prime Rate Advances.

## **2.12 Inability to Determine Rates**

(a) Subject to Section 2.11, if, on or prior to the first day of any CORRA Interest Period for any Term CORRA Advance or Daily Compounded CORRA Advance, as applicable:

- (i) the Agent determines (which determination shall be conclusive and binding absent manifest error) that "Adjusted Term CORRA" or "Adjusted Daily Compounded CORRA", as applicable, cannot be determined pursuant to the definition thereof, for reasons other than a CORRA Benchmark Transition Event, or
- (ii) the Majority Lenders determine that for any reason in connection with any request for a Term CORRA Advance or Daily Compounded CORRA

Advance, as applicable, or a conversion thereto or a continuation thereof that Term CORRA or Daily Compounded CORRA, as applicable, for any requested CORRA Interest Period with respect to a proposed Term CORRA Advance or Daily Compounded CORRA Advance, as applicable, does not adequately and fairly reflect the cost to such Lenders of making and maintaining such Advance, and the Majority Lenders have provided notice of such determination to the Agent;

the Agent will promptly so notify the Borrower and each Lender.

(b) Upon delivery of such notice by the Agent to the Borrower under Section 2.11(a) any obligation of the Lenders to make Term CORRA Advances or Daily Compounded CORRA Advances, as applicable, and any right of the Borrower to continue Term CORRA Advances or Daily Compounded CORRA Advances, as applicable, or to convert Prime Rate Advances to Term CORRA Advances or Daily Compounded CORRA Advances, as applicable, shall be suspended (to the extent of the affected Term CORRA Advances or Daily Compounded CORRA Advances, as applicable, or affected CORRA Interest Periods) until the Agent (with respect to clause (ii), at the instruction of the Lenders) revokes such notice.

Upon receipt of such notice by the Agent to the Borrower under Section 2.11(a), (i)(x) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of Term CORRA Advances or Daily Compounded CORRA Advances, as applicable, (to the extent of the affected Term CORRA Advances or Daily Compounded CORRA Advances, as applicable, or affected CORRA Interest Periods); (y) in respect of Term CORRA Advances, the Borrower may elect to convert any such request into a request for an Advance of or conversion to Daily Compounded CORRA Advances; or, failing such revocation or election, (z) the Borrower will be deemed to have converted any such request into a request for a Advance of or conversion to Prime Rate Advances, in the amount specified therein, and (ii)(x) in respect of Term CORRA Advances, the Borrower may elect to convert any outstanding affected Term CORRA Advances at the end of the applicable CORRA Interest Period, into Daily Compounded CORRA Advances, and (y) otherwise, or failing such election, any outstanding affected Term CORRA Advances or Daily Compounded CORRA Advances, as applicable, will be deemed to have been converted, at the end of the applicable CORRA Interest Period, into Prime Rate Advances. Upon any such conversion, the Borrower shall pay accrued interest on the amount so converted, together with any additional amounts required pursuant to Section 2.12 or ~~5.12~~5.13.

## **2.13      Inability to Determine Rates - SOFR**

Subject to Section 2.14, if, on or prior to the first (1st) day of any Interest Period for any SOFR Advance:

- (a) the Agent determines, acting reasonably, that "Term SOFR" cannot be determined pursuant to the definition thereof; and
- (b) the Majority Lenders determine, acting reasonably, that in connection with any request for a SOFR Advance or a conversion thereto or a continuation thereof that Term SOFR for any requested Interest Period with respect to a proposed SOFR Advance does not adequately and fairly reflect the cost to such Lenders

of funding such Advance, and the Majority Lenders have provided notice of such determination to the Agent,

then the Agent will promptly so notify the Borrower and each Lender. Upon notice thereof by the Agent to the Borrower, any obligation of the Lenders to make or continue SOFR Advances shall be suspended (to the extent of the affected SOFR Advances and, in the case of a SOFR Advance, the affected Interest Periods) until the Agent revokes such notice. Upon receipt of such notice, (i) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Advances (to the extent of the affected SOFR Advances and, in the case of a SOFR Advances, the affected Interest Periods) or, failing that, the Borrower will be deemed to have converted any such request into a request for an Advance of or conversion to US Base Rate Advances in the amount specified therein, and (ii) any outstanding affected SOFR Advances will be deemed to have been converted into US Base Rate Advances immediately or, in the case of a SOFR Advances, at the end of the applicable Interest Period. Upon any such conversion, the Borrower shall also pay any additional amounts required herein.

## **2.14 Effect of a Benchmark Transition Event**

Notwithstanding anything to the contrary herein or in any other Loan Document (and any interest rate swap agreement shall be deemed not to be a “Loan Document” for the purposes of this Section 2.14):

- (a) Benchmark Replacement If a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (Toronto time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Majority Lenders.
- (b) Benchmark Replacement Conforming Change In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

- (c) Notice; Standards for Decisions and Determinations The Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Agent will promptly notify the Borrower of the removal or reinstatement of any tenor of a Benchmark pursuant to this Section 2.14. Any determination, decision or election that may be made by the Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.14, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.14.
- (d) Unavailability of Tenor of Benchmark At any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.
- (e) Benchmark Unavailability Period Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any pending request for a SOFR Advance of, conversion to or continuation of SOFR Advances to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for an Advance of or conversion to US Base Rate Advances.
- (f) Conforming Changes In connection with the use or administration of Term SOFR, the Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

### ARTICLE 3

#### **DISBURSEMENT CONDITIONS**

##### **3.1 Conditions Precedent to an Initial Advance**

The obligations of the Lenders under this Agreement were subject to and conditional upon the following conditions precedent being satisfied:

- (a) this Agreement shall have been executed and delivered by all parties hereto;
- (b) duly executed copies of the Security shall have been delivered to the Agent (along with certificates, if any, representing all shares or other securities pledged, together with related stock powers duly executed in blank) and such financing statements or other registrations of such Security, or notice thereof, shall have been filed, registered, entered or recorded in all offices of public record necessary or desirable in the opinion of the Agent to preserve or protect the charges and security interests created thereby;
- (c) the Agent shall have received timely notice as required under Section 2.6(b);
- (d) the Agent shall have received certified copies of the Organizational Documents of each Obligor, the resolutions authorizing the execution, delivery and performance of each Obligor's respective obligations under the Loan Documents and the transactions contemplated herein, and the incumbency of the officers and directors of the Obligors;
- (e) copies of all other shareholder agreements and partnership agreements, if any, applicable to each Obligor, certified by such Obligor to be true, shall have been delivered to the Agent;
- (f) a currently dated letter of opinion of the Borrower's Counsel along with the opinions of local counsel satisfactory to Lenders' Counsel shall have been delivered to the Agent;
- (g) certificates of status or good standing, as applicable, for each Obligor's jurisdiction of existence shall have been delivered to the Agent;
- (h) the ownership, capital, corporate, tax, corporate governance, organizational and legal structure of the Obligors shall be satisfactory to the Agent;
- (i) the Lenders' requirements relative to "Anti Money Laundering" policies and "Know Your Client" rules shall have been satisfied with respect to each of the Obligors;
- (j) receipt by and Agent's satisfaction with all management contracts and the Borrower's retention strategy with respect to senior management;

- (k) receipt by and Agent's satisfaction with all Material Contracts and Material Licences and the Obligors shall be in compliance in all material respects with all such Material Contracts and Material Licences;
- (l) receipt of and Agent's satisfaction with 5-year projected financial statements for Borrower, on a consolidated basis, with at least the first two years being on a quarterly basis;
- (m) receipt and Agent's satisfaction with a consolidated pro-forma opening balance sheet of the Borrower;
- (n) receipt and Agent's satisfaction with 5-year projected Capital Expenditures for the Borrower and its Subsidiaries including, without limitation, the nature, timing and ability to finance such Capital Expenditures;
- (o) receipt and Agent's satisfaction with the accountant-reviewed financial statements of Joriki (inclusive of an income statement, balance sheet and statement of cash flows) in respect of the 2016, 2017 and 2018 Fiscal Years;
- (p) Agent's satisfaction with the interim monthly unaudited financial statements of Joriki (inclusive of an Income Statement, Balance Sheet and Statement of Cash Flows) for 2019 year-to-date as of June 30, 2019;
- (q) a Compliance Certificate calculated as of the Closing Date (using EBITDA for the twelve-month period ended June 30, 2019) shall have been delivered to the Agent confirming that (i) the Borrower has a Senior Debt to EBITDA Ratio on a *pro forma* basis after taking into account any Advance on the Closing Date not exceeding 4.00:1.0, and (ii) no Default or Event of Default has occurred and is continuing on the Drawdown Date or would result from making the Advance;
- (r) the Borrower has annualized run-rate EBITDA of not less than \$8,000,000 for the period October 1, 2018 to June 30, 2019 as evidenced by a quality of earnings report;
- (s) TorQuest, its co-investors and the management co-investors shall have paid for its acquisition of Equity Interests of the Borrower with no less than 40% equity capitalization;
- (t) the Agent's satisfaction with the Obligors' insurance coverage and receipt by Agent of certificates of insurance acceptable to the Agent showing, inter alia, the Agent as a loss payee as its interest may appear on all applicable insurance policies of the Obligors;
- (u) the Lender shall have completed their due diligence in respect of the existing operations of Joriki, historical financial statements, quality of earnings, reasonableness of financial projections, environmental matters (including environmental assessments), tax matters, litigation, market and industry analysis, access to any consultants or advisors engaged by TorQuest and any reports produced in connection therewith;

- (v) arrangements satisfactory to the Agent for repayment in full of all Debt that is not Permitted Debt owing by any Obligor to the existing lenders to such Obligor, concurrent with the initial Drawdown under the Credit Facilities;
- (w) releases, discharges and postponements with respect to all Encumbrances which are not Permitted Encumbrances, if any, shall have been delivered to the Agent in form satisfactory to the Agent;
- (x) payment of all amounts and reasonable fees (including reasonable fees of Lenders' Counsel), payable to the Lenders or the Agent, including the upfront fee payable to each Lender equal to 75 bps multiplied by such Lender's Proportionate Share of the Commitments multiplied by \$25,500,000;
- (y) all representations and warranties contained in this Agreement shall be true and correct;
- (z) a source and use of funds statement and an outline of the flow of funds from the Credit Facilities shall have been delivered to the Agent in form satisfactory to the Agent confirming that the Drawdown under the Credit Facilities will be used solely for the purposes provided for in Section 2.3 hereof;
- (aa) an executed copy, certified to be true and correct by an officer or director of the Borrower, of the Joriki Purchase Agreement and all material documentation relating to the Joriki Purchase Agreement, shall have been delivered to the Agent and shall be satisfactory to the Lenders and all conditions precedent in favour of the Borrower under the Joriki Purchase Agreement shall have been satisfied, without waiver or amendment of any condition where such waiver or amendment would be materially prejudicial to the Lenders, except with the consent of the Agent; and
- (bb) completion of the Joriki Acquisition concurrently with the transactions contemplated herein on terms and conditions reasonably satisfactory to the Lenders and substantially in accordance with the terms of the Joriki Purchase Agreement.

### **3.2 Conditions Precedent to Effectiveness of this Agreement on the Fifth Closing Date**

The obligations of the Lenders under this Agreement on the Fifth Closing Date are subject to and conditional upon the following conditions precedent being satisfied:

- (a) this Agreement shall have been executed and delivered by all parties hereto;
- (b) the Agent shall have received certified copies of the Organizational Documents of the Borrower, the resolutions authorizing the execution, delivery and performance of the Borrower's obligations under this Agreement and the transactions contemplated herein, and the incumbency of the officers and directors of the Borrower;



- (c) copies of all other shareholder agreements and partnership agreements, if any, applicable to the Borrower, certified by the Borrower to be true, shall have been delivered to the Agent;
- (d) a currently dated letter of opinion of the Borrower's Counsel satisfactory to Lenders' Counsel shall have been delivered to the Agent;
- (e) certificates of status or good standing, as applicable, for the Borrower's jurisdiction of existence shall have been delivered to the Agent;
- (f) receipt by the Agent of an acknowledgement and confirmation from each guarantor hereunder;
- (g) the Lenders' requirements relative to "Anti Money Laundering" policies and "Know Your Client" rules shall have been satisfied with respect to each of the Obligors;
- (h) the appointment of Alvarez & Marsal as a consultant for the Borrower, such appointment to be in form and substance satisfactory to the Agent and in which the Agent will be provided with access to such information and reporting (the engagement and Lenders right to access to be in form agreeable to the Agent);
- (i) a Compliance Certificate calculated as of the Fifth Closing Date (using EBITDA for the period ending December 31, 2023) shall have been delivered to the Agent;
- (j) execution and delivery of an amendment and restatement of the Subordinated Credit Agreement, such agreement to be in form and substance satisfactory to the Lenders;
- (k) the Agent's satisfaction with the Obligors' insurance coverage and receipt by Agent of certificates of insurance acceptable to the Agent showing, inter alia, the Agent as a loss payee as its interest may appear on all applicable insurance policies of the Obligors;
- (l) receipt by the Holdco of commitments for \$40,000,000 (the "**TQ Debt**") of Debt from its shareholders, which TQ Debt has been fully funded, and a corresponding commitment by Holdco to invest such funds in Shareholder Subordinated Debt to the Borrower, all of which is in form and substance satisfactory to the Agent;
- (m) execution of the TQ Subordination Agreement, such agreement to be in form and substance satisfactory to the Lenders;
- (n) receipt by the Agent of a certified copy of the TQ Security;
- (o) payment of all amounts and reasonable fees (including reasonable fees of Lenders' Counsel), payable to the Lenders or the Agent, including the fees payable pursuant to any fee letter in favour of the Agent;

- (p) all representations and warranties contained in this Agreement shall be true and correct;
- (q) no Default or Event of Default shall exist;
- (r) no Material Adverse Effect exists; and
- (s) the Agent shall have received such additional and customary documents as the Lenders shall reasonably request to establish the consummation of the transactions contemplated hereby and be satisfied, acting reasonably, as to the taking of all proceedings in connection herewith in compliance with the conditions set forth in this Agreement.

### **3.3 Conditions Precedent to Subsequent Advances**

The obligation of the Lenders to make any Advance is subject to and conditional upon the following conditions precedent being satisfied by the Borrower:

- (a) the Agent shall have received timely notice as required under Section 2.6(b);
- (b) the representations and warranties pursuant to Section 9.1 shall be repeated and shall be true and correct as if made on and as of the Drawdown Date except to the extent that such representations and warranties relate specifically to an earlier date; and
- (c) no Default or Event of Default shall have occurred and be continuing on the Drawdown Date or would result from making the Advance.

### **3.4 Conditions Precedent to Advance under Revolving C Facility**

The obligations of the Lenders under this Agreement on the closing date of the availability of Revolving C Facility are subject to and conditional upon the following conditions precedent being satisfied:

- (a) all representations and warranties contained in this Agreement shall be true and correct;
- (b) no Default or Event of Default shall exist, save and except any such Default or Event of Default having been disclosed in writing to and acknowledged by the Agent;
- (c) no Material Adverse Effect exists, save and except any such Material Adverse Effect having been disclosed to and acknowledged by the Agent;
- (d) the Agent's satisfaction with the Obligors' insurance coverage and receipt by the Agent of Certificates of insurance acceptable to the Agent showing, inter alia, the Agent as a loss payee as its interest may appear on all applicable insurance policies of the obligors; and
- (e) the Agent shall have received such additional and customary documents as the Lenders shall reasonably request to establish the consummation of the transactions contemplated hereby and be satisfied, acting reasonably, as to the

taking of all proceedings in connection herewith in compliance with the conditions set forth in this Agreement.

### **3.5 Conditions Precedent to Advance under the Revolving D Facility**

The obligations of the Lenders under this Agreement on the closing date of the availability of Revolving D Facility are subject to and conditional upon the following conditions precedent being satisfied:

- (a) all representations and warranties contained in this Agreement shall be true and correct;
- (b) no Default or Event of Default shall exist, save and except any such Default or Event of Default having been disclosed in writing to and acknowledged by the Agent;
- (c) no Material Adverse Effect exists, save and except any such Material Adverse Effect having been disclosed to and acknowledged by the Agent;
- (d) the Agent's satisfaction with the Obligors' insurance coverage and receipt by the Agent of Certificates of insurance acceptable to the Agent showing, inter alia, the Agent as a loss payee as its interest may appears on all applicable insurance policies of the obligors; and
- (e) the Agent shall have received such additional and customary documents as the Lenders shall reasonably request to establish the consummation of the transactions contemplated hereby and be satisfied, acting reasonably, as to the taking of all proceedings in connection herewith in compliance with the conditions set forth in this Agreement.

### **3.6 Waiver**

The conditions set forth in Sections 3.2 and 3.3 are inserted for the sole benefit of the Lenders and may be waived by the Lenders in accordance with the terms of Section 14.14, in whole or in part (with or without terms or conditions), in respect of any Drawdown without prejudicing the right of the Lenders at any time to assert such conditions in respect of any subsequent Drawdown.

## **ARTICLE 4**

### **EVIDENCE OF DRAWDOWNS**

#### **4.1 Account of Record**

The Agent shall open and maintain books of account evidencing all Advances and all other amounts owing by the Borrower to the Lenders hereunder. The Agent shall enter in the foregoing accounts details of all amounts from time to time owing, paid or repaid by the Borrower hereunder. The information entered in the foregoing accounts shall constitute *prima facie* evidence of the obligations of the Borrower to the Lenders hereunder with respect to all Advances and all other amounts owing by the Borrower to the Lenders hereunder. After a

request by the Borrower, the Agent shall promptly advise the Borrower of such entries made in the Agent's books of account.

## **ARTICLE 5**

### **PAYMENTS OF INTEREST AND STANDBY FEES**

#### **5.1 Interest on Prime Rate Advances**

The Borrower shall pay interest on each Prime Rate Advance during each Interest Period applicable thereto in Canadian Dollars at a rate per annum equal to the sum of (i) the Prime Rate in effect from time to time during such Interest Period plus (ii) the Prime Rate Margin. Each determination by the Agent or the Swingline Lender (under the Swingline Facility) of the Prime Rate and the Prime Rate Margin applicable from time to time shall, in the absence of manifest error, be binding upon the Borrower. Subject to Section ~~5.9~~5.10 and Section ~~5.10~~5.11, such interest shall be payable in arrears on each Interest Payment Date for such Advance for the period from and including the Drawdown Date or the preceding Conversion Date or Interest Payment Date, as the case may be, for such Advance to and including the day preceding such Interest Payment Date and shall be calculated on the principal amount of the Prime Rate Advance outstanding during such period and on the basis of the actual number of days elapsed in a year of three-hundred and sixty-five (365) days or three-hundred and sixty-six (366) days, as the case may be. Changes in the Prime Rate shall cause an immediate adjustment of the interest rate applicable to such Advance without the necessity of any notice to the Borrower.

#### **5.2 Interest on US Base Rate Advances**

The Borrower shall pay interest on each US Base Rate Advance during each Interest Period applicable thereto in United States Dollars at a rate per annum equal to the sum of (i) the US Base Rate in effect from time to time during such Interest Period plus (ii) the US Base Rate Margin. Each determination by the Agent or the Swingline Lender (under the Swingline Facility) of the US Base Rate and the US Base Rate Margin applicable from time to time shall, in the absence of manifest error, be binding upon the Borrower. Subject to Section ~~5.9~~5.10 and Section ~~5.10~~5.11, such interest shall be payable in arrears on each Interest Payment Date for such Advance for the period from and including the Drawdown Date or the preceding Conversion Date or Interest Payment Date, as the case may be, for such Advance to and including the day preceding such Interest Payment Date and shall be calculated on the principal amount of the US Base Rate Advance outstanding during such period and on the basis of the actual number of days elapsed divided by 365 or 366, as applicable. Changes in the US Base Rate shall cause an immediate adjustment of the interest rate applicable to such Advance without the necessity of any notice to the Borrower.

#### **5.3 Interest on SOFR Advances**

(a) The Borrower shall pay interest on each SOFR Advance made or maintained by a Lender and such Advance shall bear interest during each Interest Period it is outstanding (computed on the basis of a year of three-hundred and sixty (360) days and actual days elapsed) on the unpaid principal amount thereof from the date such SOFR Advance is advanced or continued, or created by conversion from a US Base Rate Advance, until maturity (whether by acceleration or otherwise) at a rate per annum equal to the sum of the SOFR Margin plus the Adjusted Term SOFR applicable to such Interest Period, payable by the

applicable Borrower on each Interest Payment Date and at maturity (whether by acceleration or otherwise).

(b) Such interest shall be payable in US Dollars on the earlier of (i) the last day of such Interest Period; and (ii) when such SOFR Advance becomes due and payable in full pursuant to the provisions hereof.

#### **5.4 Interest on Term CORRA Advances**

(a) The Borrower shall pay interest on each Term CORRA Advance made or maintained by a Lender and such Advance shall bear interest during each CORRA Interest Period it is outstanding (computed on the basis of a year of three-hundred and sixty-five (365) days and actual days elapsed) on the unpaid principal amount thereof from the date such Term CORRA Advance is advanced or continued, or created by conversion, until maturity (whether by acceleration or otherwise) at a rate per annum equal to the sum of the Term CORRA Margin plus the Adjusted Term CORRA applicable to such CORRA Interest Period, payable by the Borrower on each Interest Payment Date and at maturity (whether by acceleration or otherwise).

(b) Such interest shall be payable in Cdn. Dollars on the earlier of (a) the last day of such CORRA Interest Period; and (b) when such Term CORRA Advance becomes due and payable in full pursuant to the provisions hereof.

#### **5.5 Interest on Daily Compounded CORRA Advances**

(a) The Borrower shall pay interest on each Daily Compounded CORRA Advance made or maintained by a Lender and such Advance shall bear interest during each CORRA Interest Period it is outstanding (computed on the basis of a year of three-hundred and sixty-five (365) days and actual days elapsed) on the unpaid principal amount thereof from the date such Daily Compounded CORRA Advance is advanced or continued, or created by conversion, until maturity (whether by acceleration or otherwise) at a rate per annum equal to the sum of the Daily Compounded CORRA Margin plus Adjusted Daily Compounded CORRA applicable to such CORRA Interest Period, payable by the Borrower on each Interest Payment Date and at maturity (whether by acceleration or otherwise).

(b) Such interest shall be payable in Cdn. Dollars on the earlier of (a) the last day of such CORRA Interest Period; and (b) when such Daily Compounded CORRA Advance becomes due and payable in full pursuant to the provisions hereof.

#### **5.6 No Set-Off, Deduction etc.**

Except with respect to Taxes (which are governed by Section 15.2), all payments (whether interest or otherwise) to be made by the Borrower or any other party pursuant to this Agreement are to be made in freely transferable, immediately available funds and without set-off or deduction of any kind whatsoever (whether for deemed re-investment or otherwise) except to the extent required by Applicable Law, and if any such set-off or deduction is so required and is made, the Borrower or any other party will, as a separate and independent obligation to each Lender, be obligated to immediately pay to each Lender all such additional amounts as may be required to fully indemnify and save harmless such Lender from such

set-off or deduction and will result in the effective receipt by such Lender of all the amounts otherwise payable to it in accordance with the terms of this Agreement.

## 5.7 Interest on Revolving D Facility

All interest earned and accrued on the Revolving D Facility from November 12, 2024 to December 5, 2024, inclusive, shall accrue solely to the benefit of BNS, as Lender, and thereafter accrue to the Revolving D Lenders on a pro rata basis.

## 5.8 ~~5.7~~ Standby Fees

(a) The Borrower shall pay to the Agent for the account of the Revolving Lenders, in accordance with their Proportionate Share a standby fee in Canadian Dollars calculated at the rate per annum specified as the applicable "Standby Fee Rate" in the table contained in the definition of "Applicable Margin" on the amount by which the average of the outstanding balance of all Advances under the Revolving Facility, as at the end of each day during such month is less than the Aggregate Revolving Commitment (which, for greater certainty, is \$15,000,000 on the Fourth Closing Date). The standby fee shall be determined daily beginning on the date hereof and shall be calculated on the basis of a calendar year of three-hundred and sixty-five (365) or three-hundred and sixty-six (366) days, as the case may be, and shall be payable by the Borrower quarterly in arrears on the first (1st) Business Day of each subsequent Fiscal Quarter.

(b) The Borrower shall pay to the Agent for the account of the Revolving B Lenders, in accordance with their Proportionate Share a standby fee in Canadian Dollars calculated at the rate per annum specified as the applicable "Standby Fee Rate" in the table contained in the definition of "Applicable Margin" on the amount by which the average of the outstanding balance of all Advances under the Revolving B Facility, as at the end of each day during such month is less than the Aggregate Revolving Commitment (which, for greater certainty, is \$15,000,000 on the Fourth Closing Date). The standby fee shall be determined daily beginning on the date hereof and shall be calculated on the basis of a calendar year of three-hundred and sixty-five (365) or three-hundred and sixty-six (366) days, as the case may be, and shall be payable by the Borrower quarterly in arrears on the first (1st) Business Day of each subsequent Fiscal Quarter. The standby fee shall cease to apply after August 31, 2024.

(c) The Borrower shall pay to the Agent for the account of the Revolving C Lenders, in accordance with their Proportionate Share a standby fee in Canadian Dollars calculated at the rate per annum specified as the applicable "Standby Fee Rate" in the table contained in the definition of "Applicable Margin" plus such additional basis points indicated in subclause (d) of said definition on the amount by which the average of the outstanding balance of all Advances under the Revolving C Facility, as at the end of each day during such month is less than ~~\$10,000,000~~ 13,000,000. The standby fee shall be determined daily beginning on the date hereof and shall be calculated on the basis of a calendar year of three-hundred and sixty-five (365) or three-hundred and sixty-six (366) days, as the case may be, and shall be payable by the Borrower quarterly in arrears on the first (1st) Business Day of each subsequent Fiscal Quarter. The standby fee shall cease to apply after ~~October 31~~ December 16, 2024.

(d) The Borrower shall pay to the Agent solely for the account of ~~the Revolving D BNS, as~~ Lender, a standby fee in Canadian Dollars calculated at the rate per annum specified as the applicable "Standby Fee Rate" in the table contained in the definition of "Applicable Margin" plus such additional basis points indicated in subclause (e) of said definition

on the amount by which the average of the outstanding balance of all Advances under the Revolving D Facility, as at the end of each day during such month is less than \$4,000,000. The standby fee shall be determined daily beginning on the date hereof and shall be calculated on the basis of a calendar year of three-hundred and sixty-five (365) or three-hundred and sixty-six (366) days, as the case may be, and shall be payable by the Borrower quarterly in arrears on the first (1st) Business Day of each subsequent Fiscal Quarter. The standby fee shall cease to apply after November 15, 2024.

## 5.9 ~~5.8~~ **Fee Letters**

(a) The Borrower shall pay to the Agent such fees in such amounts, and on the terms and conditions, set out in any fee letter between the Borrower and the Agent, as such letter may be amended, supplemented or replaced from time to time, or as otherwise agreed to in writing from time to time by the Agent (or any of its Affiliates) and the Borrower. For greater certainty, each such fee letter and all such written arrangements between the Agent and the Borrower relating to the payment of fees in respect to this Agreement shall constitute Loan Documents, shall survive the execution of this Agreement and shall in all respects remain operative and binding on the Borrower.

(b) In consideration of the Lenders making available the Credit Facilities, the Borrower shall pay to the Agent (on behalf of the Lenders) fees in such amount as set out in any fee letter between the Agent and the Borrower. Such fees shall be non-refundable and shall be deemed to be fully earned when paid.

## 5.10 ~~5.9~~ **Overdue Principal and Interest**

(a) If all or part of any Prime Rate Advance or US Base Rate Advance shall not be paid when due (whether at its stated maturity, by acceleration or otherwise), such overdue amount shall bear interest (as well after as before judgment), payable on demand, at a rate per annum equal to the rate of interest applicable under this Agreement from time to time to such type of Advance from the date of such non-payment until paid in full.

(b) If all or part of any interest in respect of any Prime Rate Advance, SOFR Advance or US Base Rate Advance shall not be paid when due (whether at its stated maturity, by acceleration or otherwise), such overdue interest shall, to the extent permitted by law, bear interest (as well after as before judgment), payable on demand, at a rate per annum equal to the rate of interest applicable under this Agreement from time to time to the type of Advance in respect of which such interest was not paid from the date of such non-payment until paid in full.

## 5.11 ~~5.10~~ **Interest on Other Amounts**

If any amount owed by the Borrower to the Agent or any Lender under any of the Loan Documents is not paid when due and payable, and there is no other provision in any Loan Document specifying the interest payable on such overdue amount, such overdue amount shall bear interest (as well after as before judgment), payable (a) on demand at a rate per annum equal at all times to the Prime Rate, plus the Prime Rate Margin plus 2% (in the case of any such amount payable in any currency other than US Dollars), and (b) on demand at a rate per annum equal at all times to the US Base Rate plus the US Base Rate Margin plus 2% (in the case of any such amount payable in US Dollars), in each such case from the date of non-payment until paid in full.

## 5.12 ~~5.11~~ **Accrual of Interest – Fifth Closing Date to January 31, 2025**

(a) Subject to Section ~~5.11~~5.12(b) below, but notwithstanding anything else contained herein to the contrary, until January 31, 2025 all interest payable with respect to all outstanding Advances shall be calculated without the addition of any Applicable Margin and payment of such interest shall be deferred until the Maturity Date. For certainty such deferred interest shall not itself accrue interest.

(b) All interest payable with respect to all outstanding Advances under Revolving C Facility shall be calculated in accordance with subclause (d) under the Definition of “Applicable Margin” and payment of such interest shall be deferred until the Maturity Date.

(c) All interest payable with respect to all outstanding Advances under Revolving D Facility shall be calculated in accordance with subclause (e) under the Definition of “Applicable Margin” and payment of such interest shall be deferred until the Maturity Date.

## 5.13 ~~5.12~~ **Compensation for Losses**

In the event of (a) the payment of any principal of any Term CORRA Advance or Daily Compounded CORRA Advance, as applicable, prior to the last day of a CORRA Interest Period (including as a result of an Event of Default), (b) the conversion of any Term CORRA Advance or Daily Compounded CORRA Advance, as applicable, other than on the last day of the CORRA Interest Period, (c) the failure to borrow, convert, continue or prepay any Advance on the date specified in any notice delivered pursuant hereto, or (d) the assignment of any Term CORRA Advance or Daily Compounded CORRA Advance, as applicable, then, in any such event, the Borrower shall, after receipt of a written request by any Lender affected by any such event (which request shall set forth in reasonable detail the basis for requesting such amount), compensate each Lender for Breakage Costs attributable to such event. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section delivered to the Borrower shall be presumptively correct absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt of such demand.

# **ARTICLE 6**

## **LETTERS OF CREDIT**

### **6.1 Letters of Credit**

(a) If the Borrower wishes to request an Advance by way of issuance of Letters of Credit, the Borrower shall, at the time it delivers the notice required pursuant to Section 2.6(b), execute and deliver the Issuing Lender’s usual documentation relating to the issuance and administration of Letters of Credit (including, without limitation, all reimbursement and indemnity agreements). In the event of any inconsistency between the terms of such documentation and this Agreement, the terms of this Agreement shall prevail.

(b) Each request for a Letter of Credit shall be made available by the Issuing Lender under the Revolving Facility.

(c) No Letter of Credit may be issued for a period in excess of one year (provided that annually renewable Letters of Credit may be issued, subject to agreement of the Issuing



Lender, with a final expiry date prior to the Maturity Date). Letters of Credit may be used by the Borrower for general commercial purposes, and may not, for greater certainty, be used to guarantee obligations of Persons who are not Obligor.

(d) If, at any time, a demand for payment (the amount so demanded being herein referred to as a "relevant amount") is made under a Letter of Credit, then:

- (i) the Issuing Lender shall notify the Agent who shall:
  - (A) promptly notify the Borrower and each of the other Revolving Lenders of such demand; and
  - (B) make demand on each Revolving Lender for an amount equal to its Proportionate Share of such relevant amount which demand shall constitute a deemed Prime Rate Advance or US Base Rate Advance, as applicable, to the Borrower without the requirement of any further action on the part of the Borrower; and
- (ii) the Issuing Lender shall pay the amount demanded to the Person entitled thereto on the date upon which such amount becomes payable under the Letter of Credit.

(e) Where a demand for payment is made under a Letter of Credit issued in Canadian Dollars, the Borrower shall be deemed to have requested a Prime Rate Advance of the amount demanded pursuant to the Revolving Facility. Where a demand for payment is made under a Letter of Credit issued in US Dollars, the Borrower shall be deemed to have requested a US Base Rate Advance of the amount demanded pursuant to the Revolving Facility. In each case payment will be made by the Borrower of all charges and expenses payable to or incurred by the Issuing Lender and the Lenders in connection with payment being made under such Letter of Credit. All fees payable in connection with a Letter of Credit shall be made in the currency of such Letter of Credit.

(f) The Borrower hereby undertakes to indemnify and hold harmless the Issuing Lender and each of the Revolving Lenders from time to time on demand by the Agent from and against all liabilities and costs (including, without limitation, any costs incurred in funding any amount which falls due from the Agent and any Lender under any Letter of Credit hereunder) to the extent that such liabilities or costs are not satisfied or compensated by the payment of interest on sums due pursuant to this Agreement in connection with any Letter of Credit except where such liabilities or costs result from the negligence or wilful misconduct of the person claiming indemnification.

(g) The Issuing Lender shall at all times be entitled, and is irrevocably authorized by the Borrower, to make any payment under the Letters of Credit for which a request or demand has been made in the required form without any further reference to the Borrower and any investigation or enquiry, need not concern itself with the propriety or validity of any claim made or purported to be made under the terms of such Letter of Credit (except as to compliance with the payment conditions of such Letters of Credit) and shall be entitled to assume that any Person expressed in such Letter of Credit as being entitled to make demand or receive payments thereunder is so entitled. Accordingly, so long as a request or demand has been made as aforementioned it shall not be a defence to any demand made of the Borrower hereunder, nor shall the Borrower or its obligations hereunder be impaired by the fact (if it be

the case) that the Issuing Lender or the Lenders were or might have been justified in refusing payment, in whole or in part, of the amounts so claimed.

(h) A certificate of the Agent as to the amounts paid by any Lender pursuant to this Section 6.1 or the amount paid out under any Letter of Credit shall, in the absence of manifest error, be *prima facie* evidence of the existence and amount of such payment in any legal action or proceeding arising out of or in connection herewith.

(i) For so long as any Letter of Credit is outstanding, the Borrower shall pay to the Agent on behalf of the Lenders (which fee shall be paid by the Agent to the Lenders based on their Proportionate Share) a fee equal to the Letter of Credit Fee Rate on the amount of each Letter of Credit or, as applicable, on the Equivalent Amount of Canadian Dollars thereof, quarterly in arrears on the first (1st) Business Day of such Fiscal Quarter, beginning on the date of issuance of such Letter of Credit. In addition, the Borrower shall also pay to the Issuing Lender a fronting fee equal to 0.25% per annum on the face amount of each Letter of Credit in the currency of such Letter of Credit (unless not in Cdn. Dollars or US Dollars, in which case shall be in the Equivalent Amount of Cdn. Dollars) on the date of issuance and renewal of such Letter of Credit; provided that no such fee shall be payable when there is only one Lender. Such fees shall each be calculated on the basis of a calendar year and the number of days the Letter of Credit will be outstanding during such period.

The Borrower shall also pay the standard fees and charges of the Issuing Lender in effect from time to time for issuing, renewing and amending Letters of Credit.

(j) The full face amount of each Letter of Credit issued by the Issuing Lender on behalf of the Borrower shall be deemed to be an Advance under the Revolving Facility which Advance shall be retired upon the earlier of:

- (i) the return of the Letter of Credit to the Issuing Lender for cancellation;
- (ii) the expiration date of the Letter of Credit; or
- (iii) the deeming of the amount drawn on the Letter of Credit to be a Prime Rate Advance or a US Base Rate Advance, as applicable, under the Revolving Facility.

(k) If any Letter of Credit is outstanding upon the occurrence of an Event of Default or on the Maturity Date, the Borrower shall if required by the Lenders forthwith pay to the Agent an amount (the “**deposit amount**”) equal to the undrawn principal amount of the outstanding Letter of Credit, which deposit amount shall be held by the Agent for application against the indebtedness owing by the Borrower in respect of any draw on the outstanding Letter of Credit. In the event that the Agent is not called upon to make full payment on the outstanding Letter of Credit prior to its expiry date, the deposit amount, or any part thereof as has not been paid out, shall, so long as no Event of Default then exists, be returned to the Borrower.

(l) The obligations of the Borrower with respect to Letters of Credit shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including, without limitation, the following circumstances:

- (i) any lack of validity or enforceability of any Loan Document or the Letters of Credit;
- (ii) any amendment or waiver of or any consent to or actual departure from this Agreement;
- (iii) the existence of any claim, set-off, defence or other right which the Borrower may have at any time against any beneficiary or any transferee of a Letter of Credit (or any Persons for which any such beneficiary or any such transferee may be acting), the Issuing Lender or any other Person or entity, whether in connection with this Agreement, the transactions contemplated herein or in any other agreements or any unrelated transactions;
- (iv) any statement or any other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect except for non-compliance with the payment conditions of such Letter of Credit; or
- (v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

(m) The Borrower hereby indemnifies and agrees to hold the Issuing Lender harmless from all losses, damages, costs, demands, claims, expenses (including out-of-pocket expenses) and other consequences which the Issuing Lender may incur, sustain or suffer, other than as a result of its own negligence or wilful misconduct, as a result of issuing or amending a Letter of Credit, including legal and other expenses incurred by the Issuing Lender in any action to compel payment by the Issuing Lender under a Letter of Credit or to restrain the Issuing Lender from making payment under a Letter of Credit. Any amounts due under this indemnity shall form part of the Obligations.

It is understood and agreed that the Issuing Lender shall not have any liability for, and that the Borrower assumes all responsibility for: (i) the genuineness of any signature; (ii) the form, validity, genuineness, falsification and legal effect of any draft, certification or other document required by a Letter of Credit or the authority of the Person signing the same; (iii) the failure of any instrument to bear any reference or adequate reference to a Letter of Credit or the failure of any Persons to note the amount of any instrument on the reverse of a Letter of Credit or to surrender a Letter of Credit; (iv) the good faith or acts of any Person other than the Issuing Lender and its agents and employees; (v) the existence, form or sufficiency or breach or default under any agreement or instruments of any nature whatsoever; (vi) any delay in giving or failure to give any notice, demand or protest; and (vii) any error, omission, delay in or non-delivery of any notice or other communication, however sent, provided that the foregoing provisions do not extend to the failure by the Issuing Lender to comply with the payment conditions contained in the Letter of Credit. The determination as to whether the required documents are presented prior to the expiration of a Letter of Credit and whether such other documents are in proper and sufficient form for compliance with a Letter of Credit shall be made by the Issuing Lender in its sole discretion, which determination shall be conclusive and binding upon the Borrower absent manifest error. It is agreed that the Issuing Lender may honour, as complying with the terms of a Letter of Credit and this Agreement, any documents otherwise in order and signed or issued by the beneficiary thereof. Any action, inaction or omission on the part of the Issuing Lender

under or in connection with the Letters of Credit or any related instruments or documents, if in good faith and in conformity with such laws, regulations or commercial or banking customs as the Issuing Lender may reasonably deem to be applicable, shall be binding upon the Borrower, and shall not affect, impair or prevent the vesting of the Issuing Lender's rights or powers hereunder or the Borrower's obligation to make full reimbursement of amounts drawn under the Letters of Credit. Notwithstanding the provision of this Section 6.1(l), the Borrower shall not be responsible for and no Person shall be relieved of responsibility for any gross negligence or wilful misconduct of such Person.

## **ARTICLE 7**

### **REPAYMENT**

#### **7.1            Mandatory Repayment of Principal – Revolving Facility**

Subject to the terms hereof, the Borrower shall repay all Obligations that it owes in connection with the Revolving Facility, including the outstanding principal amount of all Advances thereunder together with all accrued interest, fees and other amounts then unpaid by it with respect to such Advances (which, for greater certainty, shall include all amounts payable by the Borrower to the Agent under Section 6.1(k) with respect to Letters of Credit outstanding on the Maturity Date) in full on the Maturity Date, and the Revolving Facility and the Commitments thereunder shall be automatically terminated on the Maturity Date.

#### **7.2            Mandatory Repayment of Principal – Revolving B Facility, Revolving C Facility, and Revolving D Facility**

Subject to the terms hereof, the Borrower shall repay all Obligations that it owes in connection with the Revolving B Facility, Revolving C Facility and Revolving D Facility, including the outstanding principal amount of all Advances thereunder together with all accrued interest, fees and other amounts then unpaid by it with respect to such Advances (which, for greater certainty, shall include any and all deferred interest pursuant to Section ~~5.44~~5.12 and/or any other section in this Agreement and all amounts payable by the Borrower to the Agent under Section 6.1(k) with respect to all amounts payable by the Borrower to the Agent under Section 6.1(k) with respect to Letters of Credit outstanding on the Maturity Date) in full on the Maturity Date, and the Revolving B Facility, Revolving C Facility, Revolving D Facility and the Commitments thereunder shall be automatically terminated on the Maturity Date.

#### **7.3            Mandatory Repayment of Principal – Term Facility**

(a) Subject to the terms hereof, the Term Facility shall be repaid by the Borrower on the last day of each Fiscal Quarter in each Fiscal Year, commencing June 30, 2025 in the principal amount of \$225,000 with the outstanding balance payable in full on the Maturity Date. Each payment shall be on a Business Day and if such day is not a Business Day, such payment shall be on the first (1st) preceding Business Day.

(b) Should there exist no Event of Default and for so long as the Borrower's Total Debt to EBITDA Ratio, as evidenced in the last Compliance Certificate delivered to the Agent, is less than 3.50:1.0, the Borrower shall not be required to make scheduled repayments contemplated by Section 7.3(a).

(c) The Borrower shall repay the outstanding principal amount of all Advances under the Term Facility, together with all accrued interest, fees and other amounts then unpaid by it under the Term Facility in full on the Maturity Date, and the Term Facility and the Commitments thereunder shall be automatically terminated on the Maturity Date.

#### **7.4 Mandatory Repayment of Principal – Delayed Draw Facility**

(a) Subject to the terms hereof, the Delayed Draw Facility shall be repaid by the Borrower on the last day of each Fiscal Quarter in each Fiscal Year, commencing with the Fiscal Quarter ended June 30, 2025 in the principal amount equal to 1.25% of the aggregate amount advanced pursuant to the Delayed Draw Facility with the outstanding balance payable in full on the Maturity Date. Each payment shall be on a Business Day and if such day is not a Business Day, such payment shall be on the first (1st) preceding Business Day.

(b) The Borrower shall repay the outstanding principal amount of all Advances under the Delayed Draw Facility, together with all accrued interest, fees and other amounts then unpaid by it under the Delayed Draw Facility in full on the Maturity Date, and the Delayed Draw Facility and the Commitments thereunder shall be automatically terminated on the Maturity Date.

#### **7.5 Voluntary Repayments and Reductions**

(a) Subject to the Agent receiving a Repayment Notice which shall be given not less than three (3) Business Days prior to the proposed repayment date and which shall be irrevocable, the Borrower may from time to time repay Advances outstanding under any of the Credit Facilities without premium, penalty or bonus provided that each such repayment shall be in a minimum aggregate amount of \$500,000 and in whole multiples of \$100,000 for Advances denominated in Canadian Dollars and in a minimum aggregate amount of US\$500,000 and in whole multiples of US\$100,000 for Advances denominated in United States Dollars. Term CORRA Advances and Daily Compounded CORRA Advances may not be repaid prior to the end of the applicable CORRA Interest Period unless the Borrower pays to the Agent (for the account of each Lender) an amount equal to the Breakage Costs (and Breakage Costs will apply regardless as to whether the repayment is voluntary or mandatory). Notwithstanding the foregoing (i) SOFR Advances may not be repaid prior to the end of the applicable SOFR Interest Period unless the Borrower pays to the Agent (for the account of each Lender) an amount equal to the Breakage Costs (and Breakage Costs will apply regardless as to whether the repayment is voluntary or mandatory); and (ii) Letters of Credit may not be repaid prior to their respective maturity or expiry dates but may be cash collateralized along with delivery of such documentation as may be required by the Agent as specified in Section 7.13. The requirement to give a Repayment Notice and the minimum repayment amounts referenced herein shall not apply to repayment of Advances under the Swingline Facility. The determination of the amount of any Breakage Costs resulting from, arising out of, or imposed upon or incurred by any Lender as a result of the repayment of any SOFR Advance or CORRA Advance prior to the end of the applicable Interest Period or CORRA Interest Period, when evidenced by a certificate from that Lender giving a reasonably detailed calculation of the amount of such loss, cost or expense, shall be *prima facie* evidence of the same.

(b) Each such voluntary repayment by the Borrower of the Term Facility or the Delayed Draw Facility will be applied in inverse order of maturity against repayments of principal due under Section 7.3. All such repayments of the Term Facility or the Delayed Draw Facility may not be reborrowed. Each such repayment shall permanently reduce the

Commitment of each Term Lender or Delayed Draw Lender in respect of the Term Facility or the Delayed Draw Facility by the amounts of the Term Lender's or the Delayed Draw Lender's Proportionate Share of such repayments. For greater certainty, the Borrower shall not have the right thereafter to increase the committed amount of the Term Facility or the Delayed Draw Facility so reduced.

(c) Upon the occurrence of a Default or Event of Default, any voluntary and mandatory repayment (for certainty, excluding any scheduled payment) against the Revolving B Facility and Revolving C Facility will require a corresponding *pro rata* equal payment against the Term Facility and the Delayed Draw Facility, provided that no voluntary or mandatory repayment shall be made against any other Credit Facility until the Revolving D Facility is repaid in full.

#### **7.6 Mandatory Repayments from Additional Debt**

(a) If the Borrower or any of its Subsidiaries incurs Debt other than Permitted Debt, the Net Proceeds thereof shall be paid by the Borrower (irrespective of whether a Subsidiary incurred such Debt) to the Agent no later than two (2) Business Days following the incurrence of such Debt and shall be applied in permanent repayment of outstanding Obligations under the Revolving D Facility and once the Revolving D Facility has been repaid in full, against the Term Facility and the Delayed Draw Facility on a *pro rata* basis and once the Term Facility and the Delayed Draw Facility have been repaid in full, against the Revolving B Facility and Revolving C Facility on a *pro rata* basis and once both have been paid in full, against the Revolving Facility (without any permanent reduction in Commitments).

(b) All repayments of the Term Facility and the Delayed Draw Facility under this Section 7.6 will be applied in inverse order of maturity against repayments of principal due under Section 7.3 and Section 7.4.

#### **7.7 Mandatory Repayments from Issuances of Equity Interests**

(a) If the Borrower issues Equity Interests (other than Excluded Issuances), the Net Proceeds thereof shall be paid by the Borrower to the Agent no later than two (2) Business Days following the issuance of such Equity Interests and shall be applied in permanent repayment of outstanding Obligations under the Revolving D Facility and once the Revolving D Facility has been repaid in full, against the Term Facility and the Delayed Draw Facility on a *pro rata* basis and once the Term Facility and the Delayed Draw Facility have been repaid in full, against the Revolving B Facility and Revolving C Facility on a *pro rata* basis and once both have been paid in full, against the Revolving Facility (without any permanent reduction in Commitments).

(b) All repayments of the Term Facility and the Delayed Draw Facility under this Section 7.7 will be applied in inverse order of maturity against repayments of principal due under Section 7.3 and Section 7.4.

#### **7.8 Mandatory Repayment on Dispositions**

(a) If any Obligor makes Dispositions pursuant to clause (d) of the Permitted Dispositions definition or with the consent of the Majority Lenders, the Net Proceeds shall be paid by the Borrower (irrespective as to which Obligor made the Disposition) to the Agent within five (5) Business Days after the closing of the transaction under which such Disposition occurs;

provided that, the Obligors may, if no Default or Event of Default exists, elect to retain such Net Proceeds provided that an Obligor reinvests such Net Proceeds in additional assets of an Obligor within one-hundred and eighty (180) days after the closing of the transaction under which such Disposition occurs. If following the one-hundred and eighty (180) day period or upon the occurrence of an Event of Default no Obligor has reinvested such excess Net Proceeds in additional assets, such proceeds shall immediately be paid by the Borrower to the Agent (irrespective as to which Obligor received the Net Proceeds). Any proceeds so paid to the Agent shall be applied in permanent repayment of outstanding Obligations under the Revolving D Facility and once the Revolving D Facility has been repaid in full, against the Term Facility and the Delayed Draw Facility on a *pro rata* basis and once the Term Facility and the Delayed Draw Facility have been repaid in full, against the Revolving B Facility and Revolving C Facility on a *pro rata* basis and once both have been paid in full, against the Revolving Facility (without any permanent reduction in Commitments).

(b) All repayments of the Term Facility and the Delayed Draw Facility under this Section 7.8 will be applied in inverse order of maturity against repayments of principal due under Section 7.3 and Section 7.4.

#### **7.9 Mandatory Repayments from Proceeds of Insurance**

(a) If the Obligors receive Net Proceeds of property insurance, the Net Proceeds of such insurance shall be paid by the Borrower (irrespective as to which Obligor received such proceeds) to the Agent, within two (2) Business Days after the receipt of such proceeds by an Obligor; provided that an Obligor may apply such excess proceeds if no Default or Event of Default exists to replace, repair or rebuild the asset to which such proceeds relate, within one-hundred and eighty (180) days following receipt thereof. If following such one-hundred and eighty (180) day period no Obligor has replaced, repaired or rebuilt the asset, such excess proceeds shall immediately be applied by the Agent against the Obligations under the Revolving D Facility and once the Revolving D Facility has been repaid in full, against the Term Facility and the Delayed Draw Facility on a *pro rata* basis and once the Term Facility and the Delayed Draw Facility have been repaid in full, against the Revolving B Facility and Revolving C Facility on a *pro rata* basis and once both have been paid in full, against the Revolving Facility (without any permanent reduction in Commitments).

(b) No Obligor shall be entitled to any proceeds of insurance if there exists an Event of Default and forthwith upon the occurrence of an Event of Default all unapplied proceeds of property insurance shall, upon notice being given to the Agent, be remitted to the Agent for application against amounts outstanding hereunder.

(c) All repayments of the Term Facility and the Delayed Draw Facility under this Section 7.9 will be applied in inverse order of maturity against repayments of principal due under Section 7.3 and Section 7.4.

#### **7.10 Mandatory Repayments from Excess Cash Flow**

(a) If the Borrower's Total Debt to EBITDA Ratio is greater than or equal to 3.50:1.0 as of the last day of the Borrower's Fiscal Year (commencing with the last day of the Fiscal Year ending June 30, 2025) as provided for in the Compliance Certificate for such period, an amount equal to fifty percent (50%) of the Excess Cash Flow for such period shall be paid by the Borrower to the Agent within one-hundred and twenty (120) days of the end of such Fiscal Year and shall be applied in permanent repayment of outstanding Obligations under the

Revolving D Facility and once the Revolving D Facility has been repaid in full (without any permanent reduction in Commitments under the Revolving D Facility), against the Term Facility and the Delayed Draw Facility on a *pro rata* basis and once the Term Facility and the Delayed Draw Facility have been repaid in full, against the Revolving B Facility and Revolving C Facility on a *pro rata* basis and once both have been paid in full, against the Revolving Facility (without any permanent reduction in Commitments under the Revolving B Facility, the Revolving C Facility or the Revolving Facility). For greater certainty, if in any given Fiscal Year the Borrower's Total Debt to EBITDA Ratio is less than 3.50:1.0 as at the end of the Borrower's Fiscal Year, no repayment with Excess Cash Flow shall be required. The amount of the Excess Cash Flow payment due for a Fiscal Year shall be reduced by voluntary principal repayments made by the Borrower against the Term Facility and the Delayed Draw Facility in such Fiscal Year.

(b) All repayments of the Term Facility and the Delayed Draw Facility under this Section 7.10 will be applied in inverse order of maturity against repayments of principal due under Section 7.3 and Section 7.4.

#### **7.11 Mandatory Repayment - Contract Break Fees**

(a) If the Borrower receives any payment as a consequence of the counterparty breaking the [REDACTED] Contract, the [REDACTED] Contract, the [REDACTED] Contract or the [REDACTED] Contract such amount received shall be applied by the Borrower as a permanent repayment of outstanding Advances under the Delayed Draw Facility.

(b) All repayments of the Delayed Draw Facility under this Section 7.10 will be applied in inverse order of maturity against repayments of principal due under Section 7.4.

#### **7.12 Currency Fluctuations**

(a) If the Agent determines that on any day as a result of currency fluctuations the aggregate of (a) Advances in Canadian Dollars then outstanding under the Revolving Facility, and (b) the Equivalent Amount in Canadian Dollars of Advances in US Dollars then outstanding under the Revolving Facility on such day exceeds the Commitments then in effect in respect of the Revolving Facility by more than three percent (3%), the Agent shall notify the Borrower that such an event has occurred, and the Borrower shall, within three (3) Business Days upon receipt of such notice, repay Advances under the Revolving Facility in an amount equal to such excess.

(b) If the Agent determines that on any day as a result of currency fluctuations the aggregate of (a) Advances in Canadian Dollars then outstanding under the Revolving B Facility, the Revolving C Facility, and the Revolving D Facility and (b) the Equivalent Amount in Canadian Dollars of Advances in US Dollars then outstanding under the Revolving B Facility, the Revolving C Facility and the Revolving D Facility on such day exceeds the Commitments then in effect in respect of the Revolving B Facility, the Revolving C Facility, and the Revolving D Facility in aggregate by more than three percent (3%), the Agent shall notify the Borrower that such an event has occurred, and the Borrower shall, within three (3) Business Days upon receipt of such notice, repay Advances under the Revolving D Facility in an amount equal to such excess first and the Advances under the Revolving B Facility and the Revolving C Facility on a *pro rata* basis in an amount equal to such excess.



**7.13            Cash Collateral**

In connection with each mandatory repayment hereunder in connection with Letters of Credit which are to be repaid prior to their respective maturity or expiry dates, the Borrower shall deposit cash with the Agent (for the benefit of the applicable Lenders) equal to the face amount of such Letters of Credit, as applicable, and shall, if requested by the Agent, concurrently deliver to the Agent a cash collateral agreement, supporting resolutions, certificates and opinions in form and substance satisfactory to the Agent.

**7.14            Payment of Breakage Costs etc.**

In connection with each voluntary or mandatory repayment hereunder (i) in connection with SOFR Advances which are repaid prior to the end of the applicable SOFR Interest Period (a) the Borrower shall pay to the Agent (for the account of each applicable Lender) all Breakage Costs, or (b) the Borrower shall deposit with the Agent cash in an amount equal to the amount due in respect to such SOFR Advance at the end of the applicable SOFR Interest Period; and (ii) in connection with Letters of Credit which are to be repaid prior to their respective maturity or expiry dates, the Borrower shall deposit cash with the Agent (for the benefit of the applicable Lenders) equal to the face amount of such Letters of Credit, and shall, if requested by the Agent, concurrently deliver to the Agent a cash collateral agreement, supporting resolutions, certificates and opinions in form and substance satisfactory to the Agent. Payments by the Borrower shall be applied first against outstanding Prime Rate Advances and US Base Rate Advances and thereafter against outstanding SOFR Advances.

**ARTICLE 8****PLACE AND APPLICATION OF PAYMENTS****8.1            Place of Payment of Principal, Interest and Fees**

(a)        The Borrower undertakes at all times when any Advance is outstanding or any other amount is owed by it under any Loan Document to maintain at the Agent's Payment Branch an account in Cdn. Dollars and an account in US Dollars, which the Agent shall be entitled to debit with such amounts as are from time to time required to be paid by the Borrower under the Loan Documents, as and when such amounts are due. Without in any way limiting the rights of the Agent pursuant to the foregoing, unless otherwise specifically agreed between the Borrower and the Agent, the Borrower hereby directs the Agent to debit the aforesaid accounts with such amounts as are from time to time required to be paid by the Borrower pursuant to this Agreement.

(b)        The Borrower undertakes at all times when any Advance is outstanding or any other amount is owed by it under any Loan Document to maintain with the Swingline Lender an account in Cdn. Dollars and an account in US Dollars, which the Swingline Lender shall be entitled to debit with such amounts as are from time to time required to be paid by the Borrower under the Swingline Facility, as and when such amounts are due. Without in any way limiting the rights of the Swingline Lender pursuant to the foregoing, unless otherwise specifically agreed between the Borrower and the Swingline Lender, the Borrower hereby directs the Swingline Lender to debit the aforesaid accounts with such amounts as are from time to time required to be paid by the Borrower pursuant to the Swingline Facility.

(c) All payments (other than payments in connection with the Swingline Facility) by the Borrower under any Loan Document, unless otherwise expressly provided in such Loan Document, shall be made to the Agent at the Agent's Payment Branch, or at such other location as may be agreed upon by the Agent and the Borrower, for the account of the Lenders entitled to such payment, not later than 12:00 noon (Toronto time) for value on the date when due, and shall be made in immediately available funds without set-off or counterclaim. All payments by the Borrower in connection with the Swingline Facility shall be made to the Swingline Lender at such location as may be agreed upon by the Swingline Lender and the Borrower, for the account of the Swingline Lender, not later than 12:00 noon (Toronto time) for value on a date when due, and shall be made in immediately available funds without set-off or counterclaim.

(d) Unless the Agent shall have been notified by the Borrower not later than 12:00 noon (Toronto time) of the Business Day prior to the date on which any payment to be made by the Borrower under a Loan Document is due that the Borrower does not intend to remit such payment, the Agent shall be entitled to assume that the Borrower has remitted or will remit such payment when so due and the Agent may (but shall not be obliged to), in reliance upon such assumption, make available to each applicable Lender on such payment date such Lender's share of such assumed payment. If the Borrower does not in fact remit such payment to the Agent as required by such Loan Document, each applicable Lender shall immediately repay to the Agent on demand the amount so made available to such Lender, together with interest on such amount at the Interbank Reference Rate, in respect of each day from and including the date such amount was made available by the Agent to such Lender to the date such amount is repaid in immediately available funds to the Agent, and the Borrower shall immediately pay to the Agent on demand such amounts as are sufficient to compensate the Agent and the Lenders for all costs and expenses (including, without limitation, any interest paid to lenders of funds without duplication of interest otherwise paid hereunder) which the Agent may sustain in making any such amounts available to the Lenders or which any Lender may sustain in receiving any such amount from, and in repaying any such amount to, the Agent or in compensating the Agent as aforesaid. A certificate of the Agent as to any amounts payable by the Borrower pursuant to the preceding sentence and containing reasonable details of the calculation of such amounts shall be *prima facie* evidence of the amounts so payable.

(e) If any amount which has been received by the Agent not later than 12:00 noon (Toronto time) on any Business Day as provided above is not paid by the Agent to a Lender on such Business Day as required under this Agreement, the Agent shall immediately pay to such Lender on demand interest on such amount at the Interbank Reference Rate in respect of each day from and including the day such amount was required to be paid by the Agent to such Lender to the day such amount is so paid.

## **8.2 Netting of Payments**

If, on any date, amounts would be due and payable under this Agreement in the same currency by the Borrower to the Lenders, or any one of them, and by the Lenders, or such Lender, to the Borrower, then, on such date, upon notice from the Agent or such Lender stating that netting is to apply to such payments, the obligations of each such party to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by the Borrower to the Lenders, or such Lender, exceeds the aggregate amount that would otherwise have been payable by the Lenders, or such Lender, to the Borrower or *vice versa*, such obligations shall be replaced by an obligation upon whichever of the Borrower or the Lenders, or such Lender, would have had to pay the larger aggregate amount to pay to the other the excess of the larger aggregate

amount over the smaller aggregate amount. For greater certainty, prior to acceleration of repayment pursuant to Section 12.2, this Section 8.2 shall not permit any Lender to exercise a right of set-off, combination or similar right against any amount which the Borrower may have on deposit with such Lender in respect of any amount to which netting is to apply pursuant to this Section 8.2, but shall apply only to determine the net amount to be payable by the Lenders or one of them to the Borrower, or by the Borrower to the Lenders or one of them pursuant to the Loan Documents.

## ARTICLE 9

### **REPRESENTATIONS AND WARRANTIES**

#### **9.1      Representations and Warranties**

The Borrower represents and warrants to the Agent and to each of the Lenders and acknowledges and confirms that the Agent and each of the Lenders are relying upon such representations and warranties:

- (a)      Existence and Qualification Except as disclosed to the Agent in writing, each Obligor (a) has been duly incorporated, established, formed, amalgamated, merged or continued, as the case may be, and is validly subsisting and in good standing as a corporation, company, limited partnership or partnership, under the laws of its jurisdiction of formation, amalgamation, merger or continuance, as the case may be (or in the case of Obligors which are not corporations or companies, has been duly created or established as a partnership or other applicable entity and validly exists under and is in good standing under the laws of the jurisdiction in which it has been created or established), where the failure by any Obligor, individually or together with one or more Obligors, to be in good standing could reasonably be expected to have a Material Adverse Effect, (b) is duly qualified to carry on its business in each jurisdiction in which it carries on business except where the failure by it, individually or together with one or more other Obligors, to be so qualified would not adversely affect its business in any material respect, and (c) has all required Material Licences.
- (b)      Power and Authority Each Obligor has the corporate, company or partnership power and authority, as the case may be, (a) to enter into, and to exercise its rights and perform its obligations under, the Loan Documents to which it is a party and all other instruments and agreements delivered by it pursuant to any of the Loan Documents, (b) to have implemented and completed the Joriki Acquisition and to enter into, and to exercise, its rights and perform its obligations under all instruments and agreements delivered by it in connection with the Joriki Acquisition, and (c) to own its Property and carry on its business as currently conducted and as currently proposed to be conducted by it.
- (c)      Execution, Delivery, Performance and Enforceability of Documents The execution, delivery and performance of each of the Loan Documents to which any Obligor is a party, and every other instrument or agreement delivered by an Obligor pursuant to any Loan Document or in connection with the Joriki Acquisition, has been duly authorized by all corporate, company or partnership actions required, and each of such documents has been duly executed and delivered by it. Each Loan Document to which any Obligor is a party constitutes

the legal, valid and binding obligations of such Obligor, enforceable against such Obligor in accordance with their respective terms (except, in any case, as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and by principles of equity).

- (d) Loan Documents Comply with Applicable Laws, Organizational Documents and Contractual Obligations None of the execution or delivery of, the consummation of the transactions contemplated in, or the compliance with the terms, conditions and provisions of any of, the Loan Documents or any of the agreements or documents delivered in connection with the Joriki Acquisition by any Obligor conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under or contravention of, any Requirement of Law in any material respect, any Obligor's Organizational Documents or any Material Contract or Material Licence, or results or will result in the creation or imposition of any Encumbrance upon any of its Property except for Permitted Encumbrances.
- (e) Consent Respecting Loan Documents Each Obligor has obtained, made or taken all consents, approvals, authorizations, declarations, registrations, filings, notices and other actions whatsoever required (including from any Governmental Authority), (except for registrations or filings which may be required in respect of the Security Documents) to enable it to execute and deliver each of the Loan Documents to which it is a party and to consummate the transactions contemplated in the Loan Documents.
- (f) Approvals, Licenses and Authorizations Except as disclosed to the Agent in writing, the Obligors have all licenses, permits, concessions, certificates, registrations, franchises and other authorizations and approvals of all Governmental Authorities that are material and required or necessary for the Obligors to carry on the Business in all material respects. Each Material Licence is valid and subsisting and in good standing and the Obligors are not in default or breach (except for immaterial breaches that do not allow for a right of termination of such licence) of any Material Licence and, to the knowledge of the Obligor, no proceeding is pending or has been threatened in writing by the applicable Government Authority to revoke or limit any Material Licence.
- (g) Taxes Each Obligor has duly and timely filed all tax returns required to be filed by it and has paid or made adequate provision for the payment of all Taxes levied on its Property or income which are showing therein as due and payable, including interest and penalties, or has accrued such amounts in its financial statements for the payment of such Taxes except for Taxes which are not material in amount or which are not delinquent or if delinquent are being contested, and, except, after the date of this Agreement, as is disclosed to the Agent in writing there is no material action, suit, proceeding, investigation, audit or claim now pending, or to its knowledge, threatened by any Governmental Authority regarding any Taxes. There is no material tax liability to any of the Obligors that will arise as a result of the completion of the Joriki Acquisition.
- (h) Judgments, Etc. As of the Fifth Closing Date, no Obligor is subject to any material judgment, order, writ, injunction, decree or award or any restriction, rule

or regulation which has not been stayed or of which enforcement has not been suspended, prohibits or delays the Joriki Acquisition.

- (i) Absence of Litigation As of the Fifth Closing Date, there are no actions, suits or proceedings pending or judgments existing or, to the best of its knowledge and belief, threatened against or affecting any Obligor or its properties which could reasonably be expected to be determined adversely to any Obligor and, if so determined, to result in a Material Adverse Effect. All actions, suits or proceeds pending or judgments existing as of the Fifth Closing Date that could reasonably be expected to result in a potential liability in excess of \$1,000,000 are set forth in Schedule 9.1(i) attached hereto.
- (j) Title to Assets Each Obligor has good title to its assets, free and clear of all Encumbrances except Permitted Encumbrances, and as of the Fifth Closing Date no Person has any agreement or right to acquire an interest in such assets other than in the ordinary course of its business and pursuant to a Permitted Disposition.
- (k) Use of Real Property All real property owned or leased by each Obligor may be used in all material respects by such Obligor pursuant to Applicable Law for the present use and operation of the business conducted on such real property by such Obligor. All leased real property (other than leases between Obligors) where the lessor is Non-Arm's Length are on market terms and conditions and, in such case, is on terms which are commercially reasonable.
- (l) Description of Real Property Schedule 9.1(l) contains a description as of the Fifth Closing Date of (a) all real property owned by each Obligor (including municipal addresses, legal description (to the extent available), the name of the Obligor that owns such property and a brief description of such property and its use), and (b) all real property leased by each Obligor (including municipal addresses, legal description (to the extent available), the name of the Obligor that leases such property, the name of the landlord, the term and any renewal rights under the applicable lease and a brief description of such property and its use).
- (m) Insurance Each Obligor or the Borrower on behalf of itself and all other Obligors maintains insurance which is in full force and effect that complies with all of the requirements of this Agreement. Schedule 9.1(m) lists all existing insurance policies maintained by the Obligors as of the Fifth Closing Date.
- (n) Labour Relations As of the Fifth Closing Date: (i) except as set out in Schedule 9.1(n), no Obligor is aware that it is engaged in any unfair labour practice; and there is no unfair labour practice complaint or complaint of employment discrimination pending against any Obligor or to the knowledge of any Obligor threatened against any Obligor, before any Governmental Authority; (ii) no material grievance or arbitration arising out of or under any collective bargaining agreement is pending against any Obligor or to the knowledge of any Obligor threatened against any Obligor; and (iii) no strike, labour dispute, slowdown or material work stoppage is pending against any Obligor or to the knowledge of any Obligor threatened against any Obligor.

- (o) Compliance with Laws Except as disclosed to the Agent in writing, no Obligor is in default under any Applicable Law or any Applicable Order in any material respect.
- (p) No Default or Event of Default No Default or Event of Default has occurred which is continuing which is known to the Borrower and which has not been disclosed to the Agent.
- (q) Corporate Structure The corporate structure of the Holdco and its Subsidiaries is, as at the Fifth Closing Date, as set out in Schedule 9.1(q), which Schedule contains:
  - (i) *Shareholdings of Obligors.* Holdco and its Subsidiaries are as provided for in Schedule 9.1(q) and, except as set forth in Schedule 9.1(q), such Obligors do not own or hold any shares in the capital of, or any other ownership interest in any other Person.
  - (ii) *Share Capital of Obligors.* The authorized capital of the Borrower and its Subsidiaries will be as provided for in Schedule 9.1(q), of which the number of issued and outstanding shares and the beneficial owners thereof at such time is provided for in Schedule 9.1(q).
  - (iii) *Rights to Acquire Shares of Obligors.* No Person will have an agreement or option or any other right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement or option, including convertible securities, warrants or convertible obligations of any nature, for the purchase, subscription, allotment or issuance of any unissued shares in the capital of any Obligor except as provided for in Schedule 9.1(q).
- (r) Relevant Jurisdictions Schedule 9.1(r) identifies in respect of each Obligor as of the Fifth Closing Date, the Relevant Jurisdictions including the full address (including postal code) of such Obligor's chief executive office, registered office and all places of business and, if different, the address at which the books and records of such Obligor are located, the address at which senior management of such Obligor are located and conduct their deliberations and make their decisions with respect to the business of such Obligor and the address from which the invoices and accounts of such Obligor are issued.
- (s) Intellectual Property Each Obligor has rights sufficient for it to use all the Intellectual Property reasonably necessary for the conduct of its business. All material patents, trade-marks, copyrights or industrial designs which have been either registered or in respect of which a registration application has been filed by it, as at the Fifth Closing Date, are listed on Schedule 9.1(s). No Obligor has received any notice of any claim of infringement or similar claim or proceeding relating to any of its Intellectual Property which, if determined against such Obligor, could reasonably be expected to have a Material Adverse Effect.

- (t) Material Contracts:
- (i) Schedule 9.1(t), accurately sets out, as of the Fifth Closing Date, all Material Contracts and Material Licences;
  - (ii) a true and complete copy of each Material Contract and Material Licence existing at the date hereof has been delivered to the Agent and each Material Contract and Material Licence is in full force and effect and no notice of intent to terminate or, if applicable, not to renew has been received with respect to any Material Contract or Material Licence; and
  - (iii) each Material Contract to which an Obligor is a party is binding upon such Obligor and, to its knowledge, is a binding agreement of each other Person who is a party to the Material Contract.
- (u) Financial Year End Its financial year end is on June 30.
- (v) Financial Information All of the quarterly and annual financial statements which have been furnished to the Agent and the Lenders, or any of them, in connection with this Agreement are complete in all material respects and such financial statements fairly present in all material respects the results of operations and financial position of the Borrower and Joriki as of the dates referred to therein and have been prepared in accordance with GAAP (except that such quarterly financial statements do not include notes and the year-end adjustments that are reflected in the corresponding accountant-reviewed or audited, as the case may be, annual financial statements). All other material financial information (including, without limitation, budgets, projections, and EBITDA calculations but excluding information of a general economic or industry-specific nature) provided to the Agent and the Lenders by or on behalf of the Borrower have been prepared in good faith and are based on assumptions and expectations that the Borrower believed to be reasonable at the time so prepared.
- (w) No Material Adverse Effect Since the date of the Borrower's most recent annual audited financial statements provided to the Lenders pursuant to this Agreement, there has been no condition (financial or otherwise), event or change in its business, liabilities, operations, results of operations or assets which constitutes or has, or could reasonably be expected to constitute, or cause, a Material Adverse Effect, save for such event or change that have been disclosed to the Agent in writing.
- (x) Environmental (a) As of the Fifth Closing Date, no Obligor is subject to any civil or criminal proceeding or investigation relating to Requirements of Environmental Law and no Obligor is aware of any threatened proceeding or investigation involving any Obligor relating to Requirements of Environmental Laws which could reasonably be expected to result in Environmental Liabilities in excess of \$1,000,000; (b) each Obligor has all permits, licences, registrations and other authorizations required by the Requirements of Environmental Laws for the operation of its business and the properties which it owns, leases or otherwise occupies except for those permits, licences, registrations and other authorizations which are not material; (c) each Obligor operates its business and its properties (whether owned, leased or otherwise occupied) in compliance with

all applicable Requirements of Environmental Laws (other than immaterial non-compliance); (d) to the knowledge of the Borrower, as of the Closing Date, none of the Obligors has caused or permitted a release of Hazardous Materials at, on or under any property owned or leased by the Borrower or any of its Subsidiaries, except for any release that would not reasonably be expected to give rise to any material Environmental Liability or relating to underground storage tanks having been located on the real property on which the Obligors operations are situated; and (e) to the knowledge of the Borrower as of the Fifth Closing Date, no real property or groundwater in, on or under any property owned or leased by any Obligor is contaminated by any Hazardous Material except for any contamination that would not reasonably be expected to give rise to any material Environmental Liability or any contamination relating to underground storage tanks having been located on the real property on which the Obligors operations are situated.

- (y) Canadian Welfare and Pension Plans Each Obligor has adopted all Canadian Welfare Plans required by Applicable Laws and each of such plans has been maintained and each Obligor is in compliance with such laws in all material respects including, without limitation, all requirements relating to employee participation, funding, investment of funds, benefits and transactions with the Obligors and persons related to them. No Obligor has a material contingent liability with respect to any post-retirement benefit under a Canadian Welfare Plan. With respect to Canadian Pension Plans: (a) no steps have been taken to terminate any Canadian Pension Plan (wholly or in part) which could result in any Obligor being required to make a material additional contribution to any Canadian Pension Plan; (b) no contribution failure has occurred with respect to any Canadian Pension Plan sufficient to give rise to a lien or charge under any applicable pension benefits laws of any other jurisdiction (for certainty, not including payments in respect of contributions payable but not yet due); and (c) no condition exists and no event or transaction has occurred with respect to any Canadian Pension Plan which is reasonably likely to result in any Obligor incurring any material liability, fine or penalty. Each Canadian Pension Plan is in compliance (other than immaterial non-compliance) with all applicable pension benefits and tax laws; (i) all contributions (other than immaterial amounts) (including employee contributions made by authorized payroll deductions or other withholdings) required to be made to the appropriate funding agency in accordance with all Applicable Laws (other than immaterial non-compliance) and the terms of each pension plan have been made in accordance with all Applicable Laws (other than immaterial non-compliance) and the terms of each Canadian Pension Plan (other than immaterial non-compliance); (ii) all liabilities under each Canadian Pension Plan are funded in accordance with the terms of the respective Canadian Pension Plans, the requirements of applicable pension benefits laws and of applicable regulatory authorities (other than immaterial non-compliance) and (iii) no event has occurred and no conditions exist with respect to any Canadian Pension Plan that has resulted or could reasonably be expected to result in any Canadian Pension Plan having its registration revoked or refused by any administration of any relevant pension benefits regulatory authority or being required to pay any taxes (other than taxes the amounts of which are immaterial) or penalties under any applicable pension benefits or tax laws.



- (z) Insolvency No Obligor (a) as at the Fifth Closing Date has committed any act of bankruptcy, (b) as at the Fifth Closing Date is insolvent, or has proposed, or given notice of its intention to propose, a compromise or arrangement to its creditors generally, (c) as at the Fifth Closing Date has any petition for a receiving order in bankruptcy filed against it, made a voluntary assignment in bankruptcy, taken any proceeding with respect to any compromise or arrangement, taken any proceeding to have itself declared bankrupt or wound-up, taken any proceeding to have a receiver appointed of any part of its assets or has had any Encumbrancer take possession of any of its Property.
- (aa) Non-Arm's Length Transactions All agreements, arrangements or transactions between any Obligor, on the one hand, and any Affiliate of or other Person not dealing at Arm's Length with such Obligor (other than another Obligor and other than ordinary course arrangements with any employee, management or director of an Obligor and fees contemplated by the definition of "Permitted Distributions" and other than arrangements related to the TQ Debt), on the other hand, in existence as of the Fifth Closing Date are set forth on Schedule 9.1(aa).
- (bb) Debt There exists no Debt of an Obligor that is not Permitted Debt.
- (cc) Use of Credit Facilities None of the Advances pursuant to the Credit Facilities and none of the services or products to be provided by the Lenders pursuant to this Agreement or the Loan Documents will be used by, or on behalf of or for the benefit of, any Person other than the Obligors.
- (dd) Margin Stock No Obligor or Subsidiary of an Obligor is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the US Federal Reserve System) ("**Margin Stock**"), and no part of the proceeds of any Advance or any other extension of credit made hereunder will be used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock. Margin Stock constitutes less than 25% of the assets of the Borrower and its Subsidiaries which are subject to any limitation on sale, pledge or other restriction hereunder.
- (ee) Investment Company It is not an "investment company" nor a company "controlled" by an "investment company" within the meaning of the *Investment Company Act of 1940*, as amended.
- (ff) Employee Plans As of the Fifth Closing Date, no Obligor or Subsidiary of an Obligor nor any member of an Obligor's or Subsidiary of an Obligor's Controlled Group sponsors, maintains, contributes to or is required to contribute or, within the preceding five years, has sponsored, maintained, or contributed to any employee pension plan subject to Title IV of ERISA or Section 412 of the IRC. Other than routine claims for benefits, no Employee Plan is subject to any pending action, investigation, examination, claim or any other proceeding initiated by any Person. Except as required by Applicable Law, none of the Welfare Plans provide for retiree benefits or for benefits to former employees or to the beneficiaries or dependents of former employees.

- (gg) ERISA To the extent applicable, with respect to each US Pension Plan and except as could not reasonably be expected to result in material liability to any Obligor or any Subsidiary of an Obligor, (i) it and each other member of its Controlled Group has fulfilled its obligations under the minimum funding standards of and is in compliance in all respects with ERISA and the IRC and has not incurred any liability to the PBGC or under Title IV of ERISA, other than a liability to the PBGC for premiums under Section 4007 of ERISA; (ii) it does not have any unfunded contingent liabilities with respect to any post-retirement benefits under a Welfare Plan, other than liability for continuation coverage described in Part 6 of Title I of ERISA or as required under US State law requirements for health continuation coverage; (iii) no Reportable Event has occurred and is continuing with respect to any US Pension Plan, and no Obligor or Subsidiary of an Obligor or other member of the Controlled Group has engaged in a non-exempt prohibited transaction described in Section 406 of ERISA or Section 4975 of the IRC with respect to any Employee Plan; (iv) no notice of intent to terminate a US Pension Plan has been filed nor has any US Pension Plan been terminated; (v) no circumstances exist which would reasonably be expected to result in the PBGC's institution of proceedings to terminate, or appoint a trustee to administer, a US Pension Plan, nor has the PBGC instituted any such proceedings; (vi) neither it nor any member of its Controlled Group has completely or partially withdrawn from a Multiemployer Plan; and (vii) it and all current members of its Controlled Group have met their minimum funding requirements under ERISA with respect to all of their US Pension Plans and the present value of all benefits under each US Pension Plan does not exceed the fair market value of such US Pension Plan assets allocable to such benefits, as determined on the most recent valuation date of such US Pension Plan on the basis of actuarial assumptions specified for funding purposes in such US Pension Plan's actuarial valuation report and in accordance with the provisions of ERISA by more than \$1,000,000.
- (hh) OFAC It is not in violation of any of the country or list based economic and trade sanctions applicable to it and administered and enforced by OFAC. No Obligor or Subsidiary of an Obligor is a Sanctioned Person or a Sanctioned Entity. If any Obligor obtains actual knowledge or receives any written notice that any Obligor, any Affiliate or any Subsidiary of any Obligor is named on the then current OFAC SDN List (such occurrence, an "**OFAC Event**"), such Obligor shall promptly (i) give written notice to the Agent and the Lenders of such OFAC Event, and (ii) comply in all material respects with all applicable laws with respect to such OFAC Event (regardless of whether the party included on the OFAC SDN List is located within the jurisdiction of the United States of America), and each Obligor hereby authorizes and consents to the Agent and the Lenders taking any and all steps the Agent or the Lenders deem necessary, in their sole but reasonable discretion, to avoid violation of all applicable laws with respect to any such OFAC Event, including the requirements of the Sanctioned Entities (including the freezing and/or blocking of assets and reporting such action to OFAC).
- (ii) Anti-Corruption Laws No part of the proceeds of the Advances shall be used, directly or indirectly: (a) to offer or give anything of value to any official or employee of any foreign government department or agency or instrumentality or government-owned entity, to any foreign political party or party official or political candidate or to any official or employee of a public international organization, or

to anyone else acting in an official capacity (collectively, “**Foreign Official**”), in order to obtain, retain or direct business by (i) influencing any act or decision of such Foreign Official in his official capacity, (ii) inducing such Foreign Official to do or omit to do any act in violation of the lawful duty of such Foreign Official, (iii) securing any improper advantage or (iv) inducing such Foreign Official to use his influence with a foreign government or instrumentality to affect or influence any act or decision of such government or instrumentality; (b) to cause any Lender to violate the *U.S. Foreign Corrupt Practices Act of 1977* (the “**FCPA**”); or (c) to cause any Lender to violate any other anti-corruption law applicable to such Lender (all laws referred to in clauses (b) and (c) being “**Anti-Corruption Laws**”).

- (jj) Sanctions Laws No Obligor and to the knowledge of the Borrower, no Affiliate or broker or other agent of any Obligor acting or benefiting in any capacity in connection with the Advances is any of the following (a “**Restricted Person**”): (a) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the “**Executive Order**”); (b) a Person that is named as a “specially designated national and blocked person” on the most current list published by OFAC at its official website or any replacement website or other replacement official publication of such list or similarly named by any similar foreign governmental authority; (c) a Person that is owned 50 percent or more by any Person described in Section 9.1(jj)(b); (d) any other Person with which any Obligor is prohibited from dealing under any Sanctions laws applicable to such Obligor; or (e) a Person that derives more than 10% of its annual revenue from investments in or transactions with any Person described in Section 9.1(jj)(a), (b), (c) or (d). Further, none of the proceeds from the Advances shall be used to finance or facilitate, directly or indirectly, any transaction with, investment in, or any dealing for the benefit of, any Restricted Person or any transaction, investment or dealing in which the benefit is received in a country for which such benefit is prohibited by any Sanctions laws applicable to any Obligor.
- (kk) RCRA No real estate located in the United States of America that is subject to a Mortgage contains any (i) hazardous waste management facility as defined pursuant to RCRA or any comparable state law, or (ii) site on or nominated for the National Priorities List promulgated pursuant to CERCLA or any State remedial priority list promulgated or published pursuant to any comparable State law.
- (ll) CERCLA No Obligor or Subsidiary of an Obligor has any material liability for response or corrective action, natural resource damage or other harm pursuant to CERCLA, RCRA or any comparable state law.

## 9.2 Survival and Repetition of Representations and Warranties

The representations and warranties set out in Section 9.1 will be deemed to be repeated by the Borrower as of the date of each request for new Advance by the Borrower (and for certainty such representations shall be made with respect to the date specified in such representation) except to the extent that on or prior to such date (a) the Borrower has advised the Agent in writing of a variation in any such representation or warranty, and (b) if such variation in the opinion of the Lenders, acting reasonably, is material to the Property, liabilities,

affairs, business, operations, prospects or condition (financial or otherwise) of the Obligors considered as a whole or could have, or be reasonably likely to result in, a Material Adverse Effect, the Lenders have approved such variation.

## **ARTICLE 10**

### **COVENANTS**

#### **10.1 Positive Covenants**

So long as this Agreement is in force and except as otherwise permitted by the prior written consent of the Majority Lenders, the Borrower shall and shall cause each other Obligor and each of their respective Subsidiaries to:

- (a) Timely Payment Make due and timely payment of the Obligations required to be paid by it hereunder.
- (b) Conduct of Business, Maintenance of Existence, Compliance with Laws Carry on and conduct its business and operations in a proper, efficient and businesslike manner, in accordance with good business practice; preserve, renew and keep in full force and effect its existence except as may otherwise be permitted pursuant to Section 10.4(b); and take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of its business and to comply in all material respects with all Material Contracts, Material Licences and Requirements of Law except where the failure to comply would have no impact or only an immaterial impact on the Business.
- (c) Further Assurances Provide the Agent and the Lenders with such other documents, opinions, consents, acknowledgements and agreements requested by the Agent, acting reasonably as are within its control and reasonably necessary to implement this Agreement or the other Loan Documents from time to time.
- (d) Access to Information Promptly provide the Agent with all information reasonably requested by the Agent for and on behalf of the Lenders from time to time concerning its financial condition and Property, and during normal business hours and upon reasonable notice, permit representatives of the Agent and the Lenders to inspect any of its Property (the cost and expense of which will be the responsibility of the Agent and Lenders' commencing the second visit each Fiscal Year (except following the occurrence and during the continuance of an Event of Default)) and, following the occurrence and during the continuance of an Event of Default, to examine and take extracts from its financial books, accounts and records including but not limited to accounts and records stored in computer data banks and computer software systems, and to discuss its financial affairs, its business or any part of its Property with its senior officers and, following the occurrence and during the continuance of an Event of Default (in the presence of such of its representatives as it may designate), its auditors.
- (e) Obligations and Taxes Pay or discharge or cause to be paid or discharged, before the same shall become delinquent all Taxes imposed upon it or upon its income or profits or in respect of its business or Property (other than Taxes the

amounts of which are immaterial and do not constitute an Encumbrance on an Obligor's Property that ranks *pari passu* or prior to the Encumbrances granted in favour of the Lenders) and file all tax returns in respect thereof; provided, however that it shall not be required to pay or discharge or to cause to be paid or discharged any such amount so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings and an adequate reserve in accordance with GAAP has been established in its books and records.

- (f) Use of Credit Facilities Use the proceeds of the Credit Facilities as contemplated by Section 2.3.
- (g) Insurance Maintain or cause to be maintained with reputable insurers, coverage of such types as is customary for and would be maintained by a corporation with an established reputation engaged in the same or similar business in similar locations and provide to the Agent, upon request and not more frequently than on an annual basis, evidence of such coverage. The Borrower shall, on an annual basis prior to the expiry or replacement of any insurance policy, at the Agent's request send copies of all renewed or replacement policies to the Agent. The Agent on behalf of the Lenders shall be indicated, as applicable, as first loss payee in respect of property insurance and additional insured in respect of liability insurance, and all property insurance policies shall contain such standard mortgage clauses as the Agent shall reasonably require for the Lenders' protection.
- (h) Notice of Litigation Promptly notify the Agent on becoming aware of the occurrence of any litigation, dispute, arbitration, proceeding or other circumstance the result of which could reasonably be expected to result in (a) a judgment or award against it in excess of \$1,500,000 or (b) a Material Adverse Effect, and from time to time provide the Agent with all reasonable information requested by the Agent concerning the status of any such proceeding.
- (i) Other Notices Promptly, upon having knowledge, give notice to the Agent on behalf of the Lenders of:
  - (i) any notice of expropriation affecting any Obligor;
  - (ii) any violation of any Applicable Law which does or could reasonably be expected to have a Material Adverse Effect on any Obligor;
  - (iii) any default under any Debt of an Obligor;
  - (iv) any termination prior to maturity of or written notice of intent to terminate prior to maturity of, or default (after giving effect to any grace period) under a Material Contract or any termination or written notice of intent to terminate, lapse, rescission or default (after giving effect to any grace period) under a Material Licence;
  - (v) any Material Adverse Effect;

- (vi) any damage to or destruction of any property, real or personal, of any Obligor having a replacement cost in excess of \$1,500,000;
  - (vii) any threatened or pending litigation or governmental, regulatory or arbitration proceeding or labour controversy or fine, penalty or other similar monetary obligation against or imposed upon the Borrower or any Subsidiary or any of their Property which could reasonably be expected to be determined adversely to the applicable Obligor and which, if so determined, could reasonably be expected to have a Material Adverse Effect or give rise to an Event of Default;
  - (viii) the receipt of insurance proceeds by any Obligor in excess of \$1,500,000;
  - (ix) any Default or Event of Default;
  - (x) any Encumbrance registered against any property or assets of any Obligor, other than a Permitted Encumbrance;
  - (xi) any Change of Control; or
  - (xii) any Obligor infringing or misappropriating or having been alleged in writing to be infringing or misappropriating, the intellectual property rights of any other Person in a manner that could reasonably be expected to have a Material Adverse Effect.
- (j) ERISA Except as could not reasonably be expected to result in material liability to any Obligor or any Subsidiary of an Obligor, promptly pay and discharge all obligations and liabilities arising under ERISA of a character which if unpaid or unperformed could reasonably be expected to result in the imposition of an Encumbrance other than a Permitted Encumbrance against any of its properties; promptly notify the Agent of (i) the occurrence of any Reportable Event with respect to a US Pension Plan, (ii) receipt of any notice from the PBGC of its intention to seek termination of any US Pension Plan or appointment of a trustee therefor, (iii) its intention to terminate or withdraw from any US Pension Plan or Multiemployer Plan which would result in the incurrence by it or any Subsidiary of any material liability, fine or penalty, and (iv) the occurrence of any event with respect to any US Pension Plan or Multiemployer Plan which would result in the incurrence by it or any Subsidiary of any material liability, fine or penalty, and (v) any material increase in its contingent liability with respect to any post-retirement Welfare Plan benefits under a Welfare Plan other than liability for continuation coverage described in Part 6 of Subtitle B of Title I of ERISA or as required under US state law requirements for health continuation coverage.
- (k) Environmental Compliance Operate its business in compliance in all material respects with Requirements of Environmental Laws and operate all Property owned, leased or otherwise used by it such that no material obligation, including a clean-up or remedial obligation, will arise under any Requirements of Environmental Law; provided, however, that if any such claim is made or any such obligation arises, the applicable Obligor or Subsidiary of an Obligor shall promptly satisfy, address or contest such claim or obligation at its own cost and

expense. The Borrower shall promptly notify the Agent upon: (a) learning of the existence of any Hazardous Material generated or used by Obligor or a Subsidiary of an Obligor or located on, above or below the surface of any land which it owns, leases, operates, occupies, uses or controls (except those being stored, used or otherwise handled in compliance with Requirements of Environmental Law), or contained in the soil, surface, water or groundwater on or beneath such land; and (b) the occurrence of any release, spill, leak, emission, discharge, leaching, dumping or disposal of Hazardous Materials that has occurred on or from such land, which, in either the case of (a) or (b), is likely to result in Environmental Liability to Obligor in excess of \$500,000. Each Obligor and each Subsidiary of an Obligor shall, with respect to each owned real estate in the United States not allow the presence or operation at such real estate of any (i) land filler dump, or (ii) hazardous waste management facility or solvent waste disposal facility as defined pursuant to RCRA or any comparable state law.

(l) Security With respect to the Security:

- (i) provide to the Agent the Security required from time to time pursuant to Article 11 in accordance with the provisions of such Article, accompanied by customary supporting resolutions, certificates and opinions in form and substance satisfactory to the Agent; and
- (ii) do, execute and deliver all such things, documents, security, agreements and assurances as may from time to time reasonably be requested by the Agent to ensure that the Agent holds at all times valid, enforceable, perfected first priority Encumbrances (subject only to Permitted Encumbrances) from the Obligors meeting the requirements of Article 11.

(m) Maintenance of Property Generally keep the Property necessary in its business in good working order and condition, normal wear and tear excepted, if requested by the Agent, and maintain all Intellectual Property necessary to carry on its business.

(n) Landlord Consents Use commercially reasonable efforts, if requested by the Agent, to obtain a consent agreement from each landlord of premises that are leased at any time and from time to time by any Obligor which agreement shall provide, *inter alia*, (a) for consent to the grant of an Encumbrance against the Obligor's interest in such lease pursuant to the Security. Such agreement shall be in form and content satisfactory to the Agent on behalf of the Lenders, acting reasonably. For purposes of this Section 10.1(n), "commercially reasonable efforts" shall not require any Obligor to pay any fees (other than reasonable legal fees of the landlord, the Obligor and the Agent) or agree to other adverse economic arrangements which are adverse in any material respect to any Obligor in order to obtain a landlord consent.

(o) Expenses Pay promptly (i) all reasonable and itemized fees and disbursements (including sales tax, goods and services tax and harmonised sales and goods and services tax) incurred or paid by the Agent, its Affiliates and the Lenders in connection with the preparation, negotiation, execution, delivery, maintenance, amendment and enforcement (including any workouts in connection with or in

lieu of any enforcement) of the Loan Documents and in connection with the consummation of the transactions contemplated by the Loan Documents including, but not limited to, financial advisors, appraisers, legal counsel and other consultants or service providers retained by the Agent (but specifically excluding, (A) unless an Event of Default has occurred and is continuing, any assignment or participation costs incurred by the Agent or any Lender, or (B) any loan syndication costs incurred by the Agent or any Lender at any time), including without limitation, all court costs and all reasonable fees and disbursements of lawyers, auditors, consultants and accountants, (ii) all reasonable out-of-pocket expenses incurred by the Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, and (iii) all reasonable out-of-pocket expenses incurred by the Agent, any Lender or the Issuing Lender, including the reasonable and documented fees, charges and disbursements of counsel, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section, or in connection with the Advances made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout restructuring or negotiations in respect of such Advances or Letters of Credit.

- (p) Pension Plans and US Pension Plans Maintain all Canadian Pension Plans and Employee Plans relating to each Obligor in compliance with all Applicable Laws in all material respects.
- (q) Employee Benefit and Welfare Plans Maintain all Welfare Plans and Canadian Welfare Plans provided by it and relating to its business in compliance with all Applicable Law in all material respects.
- (r) Material Contracts and Material Licences At the request of the Agent, from time to time, provide to the Lenders certified copies of any Material Contracts and Material Licences.
- (s) Cash Management and Bank Accounts Maintain all cash management services (which, for certainty, includes all bank accounts) of the Obligors (other than in the case of cash management requirements in the United States of America) with BNS.
- (t) Management Agreements Provide to the Agent an executed copy of each management agreement (and any amendment thereto) entered into by the Borrower with TorQuest or its Affiliates.
- (u) OFAC If any Obligor obtains actual knowledge of any OFAC Event, such Obligor shall promptly (i) give written notice to the Agent and the Lenders of such OFAC Event, and (ii) comply in all material respects with all Applicable Laws with respect to such OFAC Event (regardless of whether the party included on the OFAC SDN List is located within the jurisdiction of the United States of America), including the OFAC Sanctions Programs, and each Obligor hereby authorizes and consents to the Agent and the Lenders taking any and all steps the Agent or the Lenders deem necessary, in their sole but reasonable discretion, to avoid violation of all Applicable Laws with respect to any such OFAC Event, including



the requirements of the OFAC Sanctions Programs (including the freezing and/or blocking of assets and reporting such action to OFAC).

- (v) US Facility Lease Use commercially reasonable efforts to provide to the Agent a landlord consent, in form and substance satisfactory to the Agent, with respect to the US Facility.
- (w) [Intentionally Deleted]
- (x) Real Estate
  - (i) In the event that any Obligor acquires in fee simple any real Property located in the United States with a fair market value of US\$1,000,000, such Obligor shall execute and/or deliver, or cause to be executed and/or delivered, to Agent: (i) if required under Applicable Law, an appraisal complying with FIRREA (it being understood that existing appraisals delivered to the Agent by the Borrower may satisfy this requirement); (ii) Standard Flood Hazard Determination Form in respect of such Property, and if such Property is located in a Special Flood Hazard Area, evidence of (x) flood insurance in an amount as required by Applicable Law or as reasonably acceptable to the Agent acting reasonably, (y) compliance with the additional requirements of the National Flood Insurance Program, including without limitation a flood notification form signed by the applicable party and such insurance policy endorsements as may be required by the Agent and the Lenders; (iii) a fully executed Mortgage, in form and substance reasonably satisfactory to the Agent together with an A.L.T.A. lender's title insurance policy issued by a title insurer reasonably satisfactory to the Agent, in form and substance and in an amount (such amount not to exceed 115% of the fair market value of such property (as determined by the Borrower and accepted by the Agent, acting reasonably)), in each case, reasonably satisfactory to the Agent insuring that the Mortgage is a valid and enforceable first priority Encumbrance on the respective property, free and clear of Encumbrances (other than Permitted Encumbrances and any other defects in title acceptable to the Agent, acting reasonably); (iv) then current A.L.T.A. surveys certified to Agent and the Lenders by a licensed surveyor unless the issuer of the lender's title insurance policy will issue such policy without a survey exception or alternatively, with a survey endorsement; (v) if requested by Agent, acting reasonably, and to the extent available, copies of the "Phase I" environmental site assessment, (vi) unless waived by Agent in its discretion, an appraisal complying with FIRREA, and (vii) a local legal opinion of counsel with respect to the enforceability of the Mortgages, which is in form and substance satisfactory to the Agent, acting reasonably; provided that, on the reasonable request of the Agent having regard to the aggregate or individual value or business usage of any real Property not subject to a Mortgage, the Obligors shall deliver such of the above deliverables as the Agent shall request, acting reasonably.
  - (ii) In the event that any Obligor acquires in fee simple any real Property located in Canada with a fair market value of \$500,000, such Obligor

shall execute and/or deliver, or cause to be executed and/or delivered, to Agent: (i) an appraisal (it being understood that existing appraisals delivered to the Agent by the Borrower may satisfy this requirement); (ii) a fully executed demand debenture, in form and substance reasonably satisfactory to Agent together with a lender's title insurance policy issued by a title insurer reasonably satisfactory to Agent, in form and substance and in an amount equal to the fair market value of such property (as determined by the Borrower and accepted by the Agent, acting reasonably), in each case, reasonably satisfactory to Agent insuring that the demand debenture is a valid and enforceable first priority Encumbrance on the respective property, free and clear of all Encumbrances (other than Permitted Encumbrances); (iii) then current surveys certified to Agent and the Lenders by a licensed surveyor unless the issuer of the lender's title insurance policy will issue such policy without a survey exception or alternatively, with a survey endorsement; (iv) if requested by Agent, acting reasonably, and to the extent available, copies of the "Phase I" environmental site assessment, and (v) a local legal opinion of counsel with respect to the enforceability of such demand debenture, which is in form and substance satisfactory to the Agent, acting reasonably; provided that, on the reasonable request of the Agent having regard to the aggregate or individual value or business usage of any real Property not subject to a Mortgage, the Obligors shall deliver such of the above deliverables as the Agent shall request, acting reasonably.

- (iii) Without limiting the generality of the foregoing, to the extent reasonably necessary to maintain the continuing priority of the Encumbrance of any existing Mortgages or demand debenture as security for the Obligations in connection with the incurrence of an incremental facility or an increase in the Advances, as determined by the Agent in its reasonable discretion, the applicable Obligor to any Mortgages or demand debenture shall
  - (i) enter into and deliver to Agent, at the direction and in the reasonable discretion of Agent, a mortgage modification or new Mortgage or demand debenture in proper form for recording in the relevant jurisdiction and in a form reasonably satisfactory to Agent and substantially similar in form to such existing Mortgages or demand debenture, (ii) cause to be delivered to Agent for the benefit of the Lenders an endorsement to the title insurance policy, date down(s) or other evidence reasonably satisfactory to Agent ensuring that the priority of the Encumbrance of the Mortgages or demand debenture as security for the Obligations has not changed and confirming and/or ensuring that since the issuance of the title insurance policy there has been no material and adverse change in the condition of title and there are no intervening liens or encumbrances which may then or thereafter take priority over the Encumbrance of the Mortgages or demand debenture (other than Permitted Encumbrances) and (iii) deliver, at the request of Agent, to Agent and/or all other relevant third parties, all other items reasonably necessary to maintain the continuing priority of the Encumbrance of the Mortgages or demand debenture as security for the Obligations.

- (y) Net Cash Flow Reporting Shall ensure that there is no more than a 15% cumulative negative variance in respect of the Net Operating Cash Flow (as such term is used in the Initial Cash Flow Forecast) for the period forecast in the Initial Cash Flow Forecast.
- (z) Status Update Conference Call Shall cause appropriately informed representatives attend status update conference calls occurring weekly between the Borrower, its advisors, and the Agent at such days and times as agreed to by the Agent, the Borrower and its advisors.
- (aa) Cooperation Shall cooperate fully with the Agent and its advisors (including FTI Consulting Canada Inc. ("**FTI**")) by providing all information requested by the Agent or FTI with respect to the Obligors and their respective subsidiaries, by providing access to the books, records, property, assets, senior management and other personnel of the Obligors and their subsidiaries wherever they may be situated in whatever medium they may be recorded, at the request of and at times convenient to the Agent or FTI, as applicable, acting reasonably (which shall include the right of the Agent and/or its advisors to inspect and appraise such properties and assets or to engage an appraiser or other agent to do so on their behalf), and to otherwise cooperate with FTI in the performance of its duties in accordance with the terms of the FTI engagement letter to the Agent consented to and acknowledge by the Borrower, provided that nothing in this provision shall require the Borrower or any other Obligor to disclose any information that is subject to a claim of solicitor-client privilege or attorney-client privilege.
- (bb) Leasehold Interests Shall make commercially reasonable efforts within sixty (60) days of a request by the Agent, or such longer period as may be reasonably required, to deliver to the Agent all such documents, opinions, consents, acknowledgments and agreements, including but not limited to a debenture and charge signed by the applicable Obligor, necessary to effect the registration in all offices of public record necessary or desirable in the opinion of the Agent to preserve or protect the security interest of the Agent in all real property leased by the Obligors.

## 10.2 Financial Covenants

So long as this Agreement is in force and except as otherwise permitted by the prior written consent of the Majority Lenders:

- (a) Senior Debt to EBITDA Ratio Commencing on March 31, 2025, the Borrower, on a consolidated basis, will ensure that its Senior Debt to EBITDA Ratio at all times for the preceding Four Quarter Period is not greater than:

<u>Period</u>	<u>Ratio</u>
March 31, 2025 to December 30, 2025	6.50:1.0
December 31, 2025 to June 29, 2026	6.00:1.0
Thereafter	5.50:1.0

- (b) Total Debt to EBITDA Ratio Commencing on March 31, 2025, the Borrower, on a consolidated basis, will ensure that its Total Debt to EBITDA Ratio at all times for the preceding Four Quarter Period is not greater than:

<u>Period</u>	<u>Ratio</u>
March 31, 2025 to December 30, 2025	7.00:1.0
December 31, 2025 to June 29, 2026	6.50:1.0
Thereafter	6.00:1.0

- (c) Fixed Charge Coverage Ratio Commencing March 31, 2025, the Borrower, on a consolidated basis, will ensure that its Fixed Charge Coverage Ratio is at all times not less than 1.10:1.0.

For the purposes of calculating EBITDA for the financial covenants in paragraphs (a), (b) and (c) above, the following shall be used:

<b>Fiscal Quarter Ending</b>	<b>Canadian EBITDA</b>	<b>US EBITDA</b>
December 31, 2023 through June 30, 2025	Actual	US\$16,254,000
September 30, 2025	Actual	US\$12,191,000 plus actual US EBITDA for Fiscal Quarter ending September 30, 2025
December 31, 2025	Actual	US\$8,127,000 plus actual US EBITDA for Fiscal Quarters ending September 30, 2025 and December 31, 2025
March 31, 2026	Actual	US\$4,064,000 plus actual US EBITDA for Fiscal Quarter ending September 30, 2025, December 31, 2025 and March 31, 2026
June 30, 2026 and thereafter	Actual	Actual

- (d) Fixed Charge Coverage Ratio Commencing March 31, 2025, the calculation of Fixed Charges for the purpose of calculation of the Fixed Charge Coverage Ratio shall include a “theoretical” amortization amount which will be calculated as

\$900,000 per Four Quarter Period in respect of the Term Facility and an amount equal to 5% of the outstanding principal balance of the Delayed Draw Facility. Commencing June 30, 2025 and until completion of a Four Quarter Period thereafter, each scheduled principal payment pursuant to the Delayed Draw Facility and the Term Facility, shall be annualized. Commencing the Fiscal Quarter ended March 31, 2025 Interest Expense will be annualized each Fiscal Quarter until the completion of four (4) Fiscal Quarters.

- (e) Minimum EBITDA The Borrower on a consolidated basis, will ensure that its last twelve (12) month Canadian EBITDA as of December 31, 2024 is no less than \$4,607,030.
- (f) Minimum Liquidity The Borrower, on a consolidated basis, shall maintain Liquidity of no less than \$500,000.
- (g) Minimum Volume Production The Borrower will ensure that the case volume in connection with its US operations for the Fiscal Quarter ended December 31, 2024 is no less than 3,591,250 cases.
- (h) Equity Cure In the event of any Event of Default of the financial covenants set forth in Section 10.2(a), (b) or (c) (the “**Designated Financial Covenants**”), any equity or Shareholder Subordinated Debt contribution from the shareholders of the Borrower within ten (10) days of the Borrower being required to deliver the financial statements as provided for in Section 10.3(a), (b) or (c) will, at the written request of the Borrower, be included in the calculation of EBITDA solely for the purposes of determining compliance with such financial covenants at the end of the applicable Fiscal Quarter and any subsequent period that includes such Fiscal Quarter (any such equity contribution, a “**Specified Equity Contribution**”); provided that (a) the amount of any Specified Equity Contribution and the use of proceeds therefrom will be no greater than the amount required to cause the Borrower to be in compliance with the applicable financial covenants, (b) all Specified Equity Contributions and the use of proceeds therefrom will be disregarded for all other purposes under the Loan Documents (including, to the extent applicable, calculating EBITDA for purposes of determining basket levels, pricing, Excess Cash Flow and other items governed by reference to EBITDA or that include EBITDA in the determination thereof in any respect), (c) there shall be (x) no more than four (4) Specified Equity Contributions made during the term of this Agreement, (y) a Specified Equity Contribution may not be made more than twice in any Four Quarter Period, (z) the aggregate amount of the four Specified Equity Contributions shall not exceed \$15,000,000, and (xx) the proceeds of all Specified Equity Contributions are actually received by the Borrower and the Borrower has immediately upon receipt of the proceeds of such Specified Equity Contribution delivered to the Agent one hundred percent (100%) of the aggregate proceeds of such Specified Equity Contribution for application to the Term Facility and if paid in full, thereafter to the Delayed Draw Facility (a “**Repayment**”) in inverse order of maturity, (d) the Repayment shall be ignored for purposes of determining the amount of Debt of the Borrower and calculating the financial covenants set forth in Section 10.2(a), (b) or (c) until such time that the Specified Equity Contribution ceases to be calculated as EBITDA pursuant to the provisions of this Section 10.2(h). The Borrower shall provide notice to the Agent

of its intention to cause to be made a Specified Equity Contribution prior to the date the financial statements are required to be delivered pursuant to Section 10.3. If, after giving effect to the recalculations set forth in this Section 10.2(h), the Borrower shall then be in compliance with the Designated Financial Covenants, the Borrower shall be deemed to have satisfied the requirements of the Designated Financial Covenants and the applicable breach or default of the Designated Financial Covenants that had occurred shall be deemed cured for the purposes of this Agreement. Nothing contained herein shall be interpreted to restrict the Agent and the Lenders from accelerating the Obligations following the occurrence and during the continuance of an Event of Default pursuant to Section 11.1 as a result of the occurrence of any Event of Default other than in respect of the Designated Financial Covenants that are addressed as a consequence of a Specified Equity Contribution being made.

- (i) Liquidity Cure. In the event of any Event of Default of the financial covenant set forth in Section 10.2(f) (the “**Liquidity Covenant**”), any equity or Shareholder Subordinated Debt contribution from the shareholders of the Borrower within ten (10) days of the Liquidity Covenant being breached (the “**Breach Date**”) will, at the written request of the Borrower, be included in the calculation of Liquidity (as cash on hand) for the purposes of determining compliance with such financial covenant from the Breach Date to the date of contribution and any subsequent date in which such contribution remains as cash on hand (any such contribution, a “**Liquidity Contribution**”); provided that the aggregate amount of Liquidity Contributions will be no greater than \$40 million.

### 10.3 Reporting Requirements

The Borrower shall, and shall cause each Subsidiary to, maintain a standard system of accounting in accordance with GAAP and shall, subject to applicable privacy legislation and non-disclosure required in order to maintain solicitor-client privilege, furnish to the Agent (on behalf of the Lenders) and its duly authorized representatives such information respecting the business and financial condition of the Borrower and each Subsidiary of the Borrower as the Agent or any Lender (acting through the Agent) may reasonably request; and without any request, shall furnish to the Agent (on behalf of the Lenders):

- (a) Annual Reports As soon as available and in any event within one-hundred and twenty (120) days after the end of each of the Borrower’s Fiscal Years, cause to be prepared and delivered to the Agent, (i) the annual audited consolidated financial statements of the Borrower including, in each case and without limitation, balance sheet, statement of income and statement of cash flows for such Fiscal Year, prepared in accordance with GAAP together with (ii) a comparison of the consolidated financial results to the budget set forth in the Annual Business Plan and to the previous Fiscal Year and (iii) a management discussion and analysis with respect to such consolidated financial results, all as certified by an officer of the Borrower.
- (b) Quarterly Reports As soon as available and in any event within forty-five (45) days of the end of each Fiscal Quarter, cause to be prepared and delivered to the Agent as at the end of such Fiscal Quarter unaudited financial statements of the Borrower prepared on a consolidated basis, including, in each case and without limitation, balance sheet, statement of income, statement of cash flows,

and a list of all outstanding Hedge Arrangements, which shall be prepared in accordance with GAAP (subject to usual year-end adjustments and the absence of full note and deferred tax disclosure) together with a comparison of such consolidated financial results to the budget set forth in the Annual Business Plan and to the same period in the previous Fiscal Year and together with management discussion and analysis with respect to such consolidated financial results.

- (c) Annual Business Plan As soon as available, and in any event no later than sixty (60) days after the end of each Fiscal Year of the Borrower, a copy of the Annual Business Plan for the following Fiscal Year, such Annual Business Plan to be in reasonable detail prepared by the Borrower and in form approved by the directors of the Borrower and, following the consummation of any Acquisition which has a material effect on such Annual Business Plan, the Borrower shall provide an update of the Annual Business Plan, giving effect to such Acquisition within a reasonable period following such Acquisition.
- (d) US Facility Reporting As requested by the Lenders and with reasonable notice provided to the Borrower, (x) monthly progress with respect to the US Facility which shall outline the budget to actuals and the estimated cost to complete, and (y) monthly progress reporting from Alvarez & Marsal.
- (e) Compliance Certificate Together with the financial statements referred to in (a) and (b) above and within thirty (30) days following the end of each calendar month, provide the Agent with a Compliance Certificate, which shall set forth the calculations supporting such statements in respect of Section 10.2 hereof. For purposes of the Compliance Certificate, all calculations of the Equivalent Amount in Canadian Dollars of any amounts in another currency shall be based on the Bank of Canada noon spot rate on the last day of the Fiscal Quarter or Fiscal Year, as applicable, for which the relevant financial statements are delivered or, if such day is not a Business Day, the immediately preceding Business Day.
- (f) Management Letters Upon receipt thereof, copies of all "management letters" submitted by the Auditor in connection with the Borrower's audited financial statements.
- (g) Sufficient Copies to Agent Ensure that in complying with this Section 10.3, the Agent is supplied with sufficient quantities of all materials for each of the Lenders and the Agent and wherever possible, that electronic copies are sent which the Agent is then authorized to send electronically to the Lenders.
- (h) Anti-Money Laundering Laws Following any request therefor, information and documentation reasonably requested by the Agent or any Lender for purposes of compliance with applicable "know your customer" requirements under the PATRIOT Act or other applicable anti-money laundering laws.
- (i) Appraisals From time to time, if the Agent or a Lender reasonably determines that obtaining appraisals is necessary in order for the Agent or any Lender to comply with Applicable Laws or regulations (including any appraisals required to comply with FIRREA), and at any time if an Event of Default shall have occurred and be continuing, the Agent may, or may require the Borrower to, in either case

at the Borrower's expense, obtain appraisals in form and substance and from appraisers reasonably satisfactory to the Agent stating the then current fair market value or such other value as reasonably determined by the Agent (for example, replacement cost for purposes of Flood Insurance) of all or any portion of the fee owned real property of any Obligor.

- (j) Cash Flow Forecast On or before October 18, 2024, and on a periodic basis thereafter as agreed to between the Borrower and the Lenders, an updated Cash Flow Forecast to account for Borrower's actual performance with respect to the most recently ended period.
- (k) Cash Flow Report On a weekly basis commencing the week immediately following the initial Advance of funds under Revolving C Facility, and on a weekly basis thereafter, to be delivered no later than the 3rd Business Day after the end of each weekly period, an updated Cash Flow Report with respect to the immediately preceding weekly period.
- (l) Operating Report On or before September 30, 2024, or such other date as is acceptable to the Agent in their sole discretion, the report or reports prepared by Alvarez & Marsal in respect of its operational review mandate, including but not limited to, the viability of the Borrower's US operating plant.
- (m) Business Plan On or before October 7, 2024, or such other date as is acceptable to the Agent in their sole discretion, a business plan addressing Canadian and United States financial matters and strategic options assessment to include 3-way financial projections (Income Statement, Balance Sheet and Cash Flow) prepared on a pro forma basis to reflect strategic options.

#### **10.4 Negative Covenants**

So long as this Agreement is in force and except as otherwise permitted by the prior written consent of the Majority Lenders, the Borrower shall not and shall ensure that each Obligor and each of their respective Subsidiaries shall not:

- (a) Disposition of Property Except for Permitted Dispositions, Dispose of, in one transaction or a series of transactions, all or any part of its Property, whether now owned or hereafter acquired.
- (b) No Consolidation, Amalgamations, etc. Consolidate, amalgamate or merge with any other Person, export a corporation into a jurisdiction outside of Canada or the United States of America, enter into any corporate reorganization or other transaction intended to effect or otherwise permit a change in its existing corporate or capital structure, liquidate, wind-up or dissolve itself, or permit any liquidation, winding-up or dissolution unless prior written approval has been received from the Majority Lenders and such customary documentation as is required by Lenders' Counsel, acting reasonably, is delivered concurrently with such transaction. Notwithstanding the foregoing, (A) an Obligor may consolidate, amalgamate or merge with another Obligor, liquidate, wind-up or dissolve itself into another Obligor, (B) an Excluded Subsidiary may consolidate amalgamate or merge with an Obligor, liquidate, wind-up or dissolve, itself into an Obligor, and (C) an Obligor may change its capital structure subject to



- (i) there existing no Default or Event of Default, (ii) the Agent being provided with no less than fifteen (15) days' prior written notice of the occurrence of such event, (iii) concurrent with such event, the Agent being provided with such additional Loan Documents that it requires, acting reasonably, in connection with such event including, if required, to obtain Security over any Equity Interests of the Borrower and any of its Subsidiaries arising therefrom, (iv) the Agent being provided with such customary legal opinions as it requires, acting reasonably, in connection therewith and (v) such event not having any negative impairment on the Security granted in favour of the Lenders and the obligations of the Obligors pursuant to the Loan Documents in effect at such time.
- (c) No Change of Name Change its name, adopt a French form of name or change its jurisdiction of incorporation or formation, its chief executive office, principal place of business or location at which it keeps records in respect of Accounts Receivable, in each case without providing the Agent with fifteen (15) days' prior written notice thereof, provided that the Agent may shorten or waive such notice without consent of the Lenders.
- (d) No Debt Create, incur, assume or permit any Debt to remain outstanding, other than Permitted Debt.
- (e) No Investments Make any Investments except (i) Investments permitted in accordance with the provisions of Sections 10.4(i), 10.4(m) and 10.4(o), (ii) Cash Equivalents, (iii) Permitted Intercompany Debt, (iv) Investments in Obligors, and (v) Investments with the proceeds of the issuance by the Borrower or Holdco of Equity Interests and Shareholder Subordinated Debt for such purpose.
- (f) No Financial Assistance Give any Financial Assistance to any Person other than (i) Financial Assistance in the form of Investments permitted pursuant to the provisions of Section 10.4(e), (ii) Permitted Intercompany Debt, and (iii) loans to employees to purchase Equity Interests of the Borrower provided that such funds are immediately thereafter re-invested in the Borrower to purchase Equity Interests and such Equity Interests are pledged to the Agent as required by this Agreement.
- (g) No Distributions Make any Distribution except Permitted Distributions provided on and after such time as the first Advance is made under Revolving C Facility the Borrower shall not make any payments made on Permitted Intercompany Debt other than as may be required to facilitate ordinary course cash management among the Obligors in accordance with past practices.
- (h) No Encumbrances Create, incur, assume or permit to exist any Encumbrance upon any of its Property except Permitted Encumbrances.

- (i) Acquisitions Make any Acquisitions (subject to compliance with the provisions contained herein) or other Acquisitions that comply with the following terms and conditions:
- (i) at the time of the Acquisition there exists no Default or Event of Default and there shall exist no Default or Event of Default after giving effect to the completion of the Acquisition;
  - (ii) the Agent shall have been provided with the Borrower's business, financial, accounting, tax, legal and environmental due diligence with respect to the target of such Acquisition which shall include all due diligence material prepared by the Borrower or TorQuest on its behalf in addition to such other information as may be required by the Lenders acting reasonably;
  - (iii) the Agent shall have received external financial statements for the target of the Acquisition (which shall include historical information for a two year period and a three year *pro forma* financial forecast on a stand-alone and consolidated basis to the extent the Person who is the target of such Acquisition has existed for such period of time), business plans prepared in connection with the Acquisition and a financial forecast prepared by the Borrower taking into account the Acquisition of the target;
  - (iv) the aggregate cash consideration (including future payments due and Earn Out Obligations) of any particular Acquisition shall not exceed a total consideration of \$10,000,000 unless funded solely by the issuance of Equity Interests or the increase of Shareholder Subordinated Debt;
  - (v) the aggregate cash consideration (including future payments due and Earn Out Obligations) for all Acquisitions during any Fiscal Year (excluding Acquisitions funded solely from the issuance of Equity Interests and/or the incurrence of Shareholder Subordinated Debt) shall not exceed \$20,000,000;
  - (vi) after giving effect to the Acquisition, the Borrower shall, on a *pro forma* basis, be in compliance with each of the financial covenants (based on adjustments consistent with the definition of EBITDA) provided for in Section 10.2 of this Agreement for the Four Quarter Period immediately preceding the proposed Acquisition and shall provide a Compliance Certificate evidencing as such;
  - (vii) the Acquisition shall not constitute a Hostile Take-Over Bid;
  - (viii) the Agent shall receive at least fifteen (15) days' prior written notice of such Acquisition, which notice shall include a description of such proposed Acquisition;
  - (ix) the business subject to such Acquisition shall have its primary operations in Canada or the United States of America and shall be in the Business or a reasonably related business;

- (x) if such Acquisition is of Equity Interests of a Person or Persons, the Agent shall receive the documents and agreements contemplated by Section 10.4(o)(c), (d), (e) and (f) within the thirty (30) day time frame specified therein; and
  - (xi) on or prior to the date of the Acquisition, the Agent shall receive copies of the acquisition agreement and such other related material agreements requested by the Agent.
- (j) No Change to Year End Make any change to its Fiscal Year, provided that the Borrower may change its Fiscal Year to a period ending on December 31 without the consent of the Lenders, provided that the Agent shall be provided with no less than thirty (30) days' prior written notice. Upon receipt by the Agent of any such notice, (i) references in this Agreement to a Fiscal Year shall thereafter mean the 12-month period ending December 31, (ii) references in this Agreement to a Fiscal Quarter shall thereafter mean the successive three-month periods ending on or about March 31, June 30, September 31 and December 31, and (iii) unless the context suggests otherwise, references to an action being made at the end of a specific Fiscal Quarter shall thereafter mean the March 31, June 30, September 30 or December 31 date subsequent to the intended date.
- (k) No Change to Business Carry on any business other than the Business.
- (l) Location of Assets in Other Jurisdictions Except for any Property in transit in the ordinary course of business, acquire any Property outside of the Relevant Jurisdictions identified in Schedule 9.1(r) or move any Property from one jurisdiction to another jurisdiction where the movement of such Property would cause the Encumbrance of the Security over such Property to cease to be perfected under Applicable Law, or suffer or permit in any other manner any of its Property to not be subject to the Encumbrance of the Security or to be or become located in a jurisdiction as a result of which the Encumbrance of Security over such Property is not perfected, unless (a) the Obligor has first given ten (10) days' prior written notice thereof to the Agent (which notice the Agent may shorten or waive without consent of the Lenders), and (b) the applicable Obligor has first executed and delivered to the Agent all Security and all financing or registration statements in form and substance satisfactory to the Agent which the Agent or its counsel, acting reasonably, from time to time deem necessary or advisable to ensure that the Security at all times constitutes a perfected first priority Encumbrance (subject only to Permitted Encumbrances) over such Property notwithstanding the movement or location of such Property as aforesaid together with such customary supporting certificates, resolutions, opinions and other documents as the Agent may deem necessary, acting reasonably, or desirable in connection with such security and registrations.
- (m) No Share Issuance Issue any Equity Interests unless the Person to whom such Equity Interests are issued is an Obligor (or in the case of issuances by the Borrower, to Holdco) and then only if the additional Equity Interests so issued are concurrently and validly pledged to the Agent under the Security and all resolutions (corporate, shareholder or otherwise) required by the Agent, acting reasonably, in connection therewith are delivered to the Agent.

- (n) Amendments to Organizational Documents Subject to Section 10.4(b) and (c), amend any of its Organizational Documents in a manner that would be prejudicial to the interests of any of the Lenders under the Loan Documents.
- (o) No New Subsidiaries Create or acquire any Subsidiary after the date of this Agreement unless: (a) such Subsidiary exists pursuant to the laws of Canada, any Province or Territory of Canada or any state of the United States of America; (b) all of the issued and outstanding capital of such Subsidiary is owned by an Obligor; and (c) within thirty (30) days of such creation or acquisition (i) such new Subsidiary provides, *inter alia*, a legal, valid and enforceable guarantee in favour of the Agent for and on behalf of the Lenders in form and substance satisfactory to the Agent (it being acknowledged the forms delivered on the Closing Date are satisfactory subject to any amendments that may be reasonably required by the Agent); (ii) all of the issued and outstanding shares of such new Subsidiary are pledged to the Agent (iii) such new Subsidiary provides such Security as the Agent views as necessary in order to create a first priority perfected Encumbrance (subject to Permitted Encumbrances) in all assets acquired and/or Equity Interests of the acquired Person or Persons (including all third party consents reasonably required by the Agent) and (iv) all resolutions (corporate, shareholder or otherwise) required by the Agent, acting reasonably, in connection therewith, are delivered to the Agent, and in each case customary legal opinions are delivered by Borrower's Counsel to the Lenders, acting reasonably.
- (p) Hostile Take-Over Bid Make or complete a Hostile Take-Over Bid.
- (q) Non-Arm's Length Transactions Except as set out in Schedule 9.1(aa) or in respect of the transactions contemplated by the Shareholder Contribution Agreement, effect any transactions with any Person (other than an Obligor) not dealing at Arm's Length with the transacting Obligor, except any transaction on terms no less favourable to such Obligor as would be obtainable in a comparable transaction with a Person which is at Arm's Length with such Obligor, as applicable; provided that the foregoing shall not apply to:
  - (i) transactions between Obligors; or
  - (ii) other transactions or arrangements expressly permitted by this Agreement.
- (r) Sale and Leaseback Except for Permitted Dispositions pursuant to clause (e) of such definition, enter into any arrangement with any Person providing for the leasing by any Obligor, as lessee, of Property which has been or is to be sold or transferred by such Obligor to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such Property or the lease obligation of any Obligor.
- (s) US Bank Accounts Open or maintain any bank accounts in the United States of America other than with BNS unless the Agent has received a deposit account control agreement in form and substance satisfactory to the Agent within forty-five (45) days of the opening of such account.

- (t) Auditor Change its Auditor unless any replacement is a nationally recognized accounting firm.
- (u) Hedge Arrangements Enter into any Hedge Arrangements except Qualifying Hedge Arrangements in the ordinary course of business to hedge interest rate, foreign exchange and commodity risks.
- (v) Anti-Money Laundering and Anti-Terrorism Finance Laws; Foreign Corrupt Practices Act; Sanctions Laws; Restricted Person The Borrower shall not, and shall not permit any Subsidiary to, (a) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or otherwise violates any Anti-Terrorism Law, Anti-Corruption Law or Sanctions law, (b) cause or permit any of the funds that are used to repay the Obligations to be derived from any unlawful activity with the result that the Agent, any Lender or any Obligor would be in violation of any Applicable Law or (c) use any part of the proceeds of the Advances, directly or indirectly, for any conduct that would cause the representations and warranties in Sections 9.1(ii) and 9.1(jj) to be untrue as if made on the date any such conduct occurs.

## **ARTICLE 11**

### **SECURITY**

#### **11.1 Form of Security**

(a) Security Delivered on the Closing Date. On the Closing Date, as continuing collateral security for the payment and satisfaction of all Obligations of the Borrower to the Agent and the Lenders, the Borrower delivered or caused to be delivered to the Agent for itself and on behalf of the Lenders the following Security:

- (i) a general security agreement from the Borrower in favour of the Agent constituting a first-priority Encumbrance (subject only to Permitted Encumbrances) on all of its present and future Property;
- (ii) a securities pledge agreement from the Borrower, in favour of the Agent constituting a first-priority Encumbrance (subject to Permitted Encumbrances) on all Equity Interests that it owns;
- (iii) a limited recourse guarantee from Holdco guaranteeing the due payment and performance to the Agent and the Lenders or any one or more of them of all present and future Obligations of the Borrower to the Agent and the Lenders or any one or more of them;
- (iv) a securities and note pledge agreement from Holdco in favour of the Agent constituting a first-priority Encumbrance (subject to Permitted Encumbrances) on all Equity Interests and Shareholder Subordinated Debt that it owns in the Borrower together with certificates and transfer powers; and

- (v) a specific assignment of the Joriki Purchase Agreement in favour of the Agent from the Borrower.

(b) Security Delivered Upon Closing of Joriki Acquisition. On the Closing Date, immediately after completion of the Joriki Acquisition, as continuing collateral security for the payment and satisfaction of all Obligations of the Borrower to the Lenders, the Borrower delivered or caused to be delivered to the Agent for itself and on behalf of the Lenders the following documents:

- (i) all share certificates representing the shares of Joriki held by the Borrower and each Subsidiary of Joriki, together with duly executed stock powers of attorney;
- (ii) a guarantee from Joriki and each of its Subsidiaries guaranteeing the due payment and performance to the Agent and the Lenders of all present and future Obligations of the other Borrower to the Agent and the Lenders or any one or more of them under the Loan Documents;
- (iii) a general security agreement from Joriki and each of its Subsidiaries in favour of the Agent constituting a first-priority Encumbrance (subject only to Permitted Encumbrances) on all of its present and future personal Property;
- (iv) a securities pledge agreement from Joriki and each of its Subsidiaries in favour of the Agent constituting a first-priority Encumbrance (subject to Permitted Encumbrances) on all Equity Interests that it owns from time to time;
- (v) an assignment of all policies of insurance from each Obligor with respect to all property and assets, all perils insurance, business interruption insurance and any key man insurance;
- (vi) a \$250,000,000 fixed and floating charge debenture from Joriki charging all personal property and all of the freehold interests in its lands and premises, the said mortgages and encumbrances to be subject to no prior Encumbrances other than Permitted Encumbrances; and
- (vii) the landlord consent agreement to the extent contemplated by Section 10.1(n).

(c) Security Delivered on Amalgamation. Immediately following the Amalgamation (and for greater certainty, on the same day as the Amalgamation), the Borrower delivered or caused to be delivered to the Agent for itself and on behalf of the Lenders as continuing collateral security for payment and satisfaction of all Obligations of the Borrower to the Lenders:

- (i) all share certificates representing the shares of Amalco held by Holdco, together with duly executed stock powers of attorney;
- (ii) a general security agreement from Amalco in favour of the Agent constituting a first-priority Encumbrance (subject only to Permitted Encumbrances) on all of its present and future personal Property;

- (iii) a confirmation and acknowledgement from Holdco to (i) the effect that the securities pledge agreement executed and delivered by it on Closing charges all of the issued and outstanding shares and Shareholder Subordinated Debt of Amalco and the said shares having been issued by Amalco upon the Amalgamation, and (ii) the continuing effect of the subordination and postponement agreement executed and delivered by it on Closing;
- (iv) a confirmation and acknowledgement from Amalco to (i) the effect that the securities pledge agreement executed and delivered by the amalgamated Obligors prior to the Amalgamation charge all of the issued and outstanding shares held by Amalco, the said shares having been delivered by Amalco upon the Amalgamation, and (ii) the continuing effect of the Security granted by the Borrower and each amalgamated Obligor prior to the Amalgamation and the indebtedness owing by it under this Agreement; and
- (v) a confirmation and acknowledgement from each Guarantor following the Amalgamation as to the continuing enforceability of (i) its guarantee and that such guarantee guarantees the Obligations of the Borrower, and (ii) the Security delivered by it.

## **11.2 After Acquired Property and Further Assurances**

Each Obligor shall from time to time, at the reasonable request of the Agent, execute and deliver all such further deeds or other instruments of conveyance, assignment, transfer, mortgage, pledge or charge in connection with any of its Property, whether now existing or acquired by any Obligor after the date hereof and intended to be subject to the security interests created hereby including any insurance thereon.

## **11.3 Application of Proceeds of Security**

Each of the Lenders acknowledges that the Agent holds the Security to secure all of the Obligations and upon the occurrence of an acceleration of Obligations under Section 12.2, shall distribute the proceeds of realisation in accordance with Section 12.11.

## **11.4 Security Charging Real Property**

Notwithstanding anything to the contrary contained in any Loan Document, to the extent that the charges and security interests created by the Security charge real property or any interest therein such charges and security interests on such real property shall secure interest after the occurrence of an Event of Default at the same rates as those in effect prior to such occurrence.

## **11.5 Hedging Obligations**

Upon (i) the termination or maturity of this Agreement or (ii) with respect to a Lender, the occurrence of any event resulting in such Lender ceasing to be a Lender pursuant to this Agreement, the Borrower specifically agrees that the Security shall remain as effective security for the obligations under any and all Qualifying Hedge Arrangements and such Qualifying Hedge Arrangements shall continue to be "Obligations" for purposes of the Security.

## ARTICLE 12

### DEFAULT

#### 12.1 Events of Default

The occurrence of any one or more of the following events (each such event being herein referred to as an “**Event of Default**”) shall constitute a default under this Agreement:

- (i) if the Borrower fails to pay any amount of principal of any Advance when due; or
- (ii) if the Borrower fails to pay any interest, fees or other Obligations under the Loan Documents when due and payable and such non-payment continues for a period of three (3) Business Days; or
- (iii) if the Borrower fails to observe or perform any of the covenants in Section 10.1(y), Sections 10.2 (subject to Section 10.2(h) or 10.2(i)) or 10.3(a) through (e), 10.3(j) through (m) or 10.4; or
- (iv) if any Obligor or any LRG neglects to observe or perform any covenant or obligation contained in this Agreement or any other Loan Document (other than a covenant or condition whose breach or default in performance is specifically dealt with elsewhere in this Section 12.1 or in relation to a Specified Default) and the Borrower shall fail to remedy such default within thirty (30) days from the date of non-compliance; or
- (v) if any representation or warranty made by any Obligor or any LRG in this Agreement, any Loan Document or in any certificate or other document at any time delivered hereunder to the Agent or the Lenders shall prove to have been incorrect on and as of the date thereof and, to the extent capable of being cured, the Borrower shall have failed to remedy such default within thirty (30) days from the date of the occurrence of such event; or
- (vi) if any Obligor ceases to carry on business generally or admits its inability or fails to pay its debts generally; or
- (vii) if any Obligor (i) fails to make any payment when such payment is due and payable to any Person in relation to any Debt (other than Shareholder Subordinated Debt or Permitted Intercompany Debt or the Subordinated Debt to the extent subject to the Standstill Period (as defined in the Intercreditor Agreement) or other forbearance) which in the aggregate principal amount then outstanding is in excess of \$500,000 and such payment is not made within any applicable cure or grace period; (ii) defaults in the observance or performance of any other agreement or condition in relation to any such Debt (other than Shareholder Subordinated Debt or Permitted Intercompany Debt or the Subordinated Debt as a result of the Specified Default or to the extent subject to the Standstill Period (as defined in the Intercreditor Agreement) or other



forbearance) to any Person which in the aggregate principal amount then outstanding is in excess of \$500,000 or contained in any instrument or agreement evidencing, securing or relating thereto and such default is not waived or cured within any applicable cure or grace period; or (iii) any other event shall occur or condition exist, the effect of which default or other condition is to cause, or to permit the holder of such Debt (other than Shareholder Subordinated Debt or Permitted Intercompany Debt or the Subordinated Debt as a result of the Specified Default or to the extent subject to the Standstill Period (as defined in the Intercreditor Agreement) or other forbearance) to cause, such Debt which in the aggregate principal amount then outstanding is in excess of \$500,000 to become due prior to its stated maturity date; or

- (viii) if any Obligor or any LRG denies its obligations under any Loan Document or claims any of the Loan Documents to be invalid or withdrawn in whole or in part; or
- (ix) any of the Loan Documents or any material provision of any of them becomes unenforceable, unlawful or is changed in a manner which is adverse to the Agent and the Lenders by virtue of legislation or by a court, statutory board or commission, and if any Obligor does not, within five (5) Business Days of receipt of notice of such Loan Document or material provision becoming unenforceable, unlawful or being changed and being provided with any required new agreement or amendment for execution, replace such Loan Document with a new agreement that is in form and substance satisfactory to the Agent acting reasonably or amend such Loan Document to the satisfaction of the Agent acting reasonably; or
- (x) if a decree or order of a court of competent jurisdiction is entered adjudging an Obligor a bankrupt or insolvent or approving a petition seeking the winding-up of an Obligor under the *Companies' Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada), the *United States Bankruptcy Code* or the *Winding-Up and Restructuring Act* (Canada) or any other bankruptcy, insolvency or analogous laws or issuing sequestration or process of execution against any substantial part of the assets of an Obligor or ordering the winding up or liquidation of its affairs; or
- (xi) if any Obligor becomes insolvent, makes any assignment in bankruptcy or makes any other similar assignment for the benefit of creditors, makes any proposal under the *Bankruptcy and Insolvency Act* (Canada) or any comparable law, seeks relief under the *Companies' Creditors Arrangement Act* (Canada), the *Winding-Up and Restructuring Act* (Canada), the *United States Bankruptcy Code* or any other bankruptcy, insolvency or analogous law, is adjudged bankrupt, files a petition or proposal to take advantage of any act of insolvency, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other Person with similar powers of itself or of all or any substantial portion of its assets, or files a petition or otherwise commences any proceeding seeking any

reorganization, arrangement, composition or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors' rights or consents to, or acquiesces in, the filing of such a petition; or

- (xii) if any proceeding or filing shall be instituted or made against any Obligor seeking to have an order for relief entered against such Obligor as debtor or to adjudicate it bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment or composition under any law relating to bankruptcy, insolvency, reorganization or relief or debtors (including, without limitation, the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Winding-Up and Restructuring Act* (Canada) and the *United States Bankruptcy Code*) or seeking appointment of a receiver, trustee, custodian or other similar official for such Obligor or for any substantial part of its properties or assets unless the same is being contested actively and diligently in good faith by appropriate and timely proceedings and is dismissed, vacated or permanently stayed within thirty (30) days of institution; or
- (xiii) if an Encumbrancer takes possession by appointment of a receiver, receiver and manager, or otherwise of any material portion of the Property of any Obligor; or
- (xiv) if an execution, writ of seizure and sale, sequestration or decree for the payment of money due shall have been obtained or entered against an Obligor in an amount in excess of \$500,000 (individually or in the aggregate for all Obligors) and such execution, writ of seizure and sale, sequestration or decree shall not have been and remain vacated, satisfied, discharged or pending appeal within the applicable appeal period stayed within thirty (30) days; or
- (xv) if a final judgement not covered by insurance (exclusive of any deductible) shall have been obtained or entered against an Obligor in an amount in excess of \$500,000 (individually or in the aggregate for all Obligors) and such judgement shall not have been and remain vacated, satisfied, discharged or pending appeal within the applicable appeal period stayed within thirty (30) days; or
- (xvi) if any of the Security shall cease to be a valid and perfected first priority security interest subject only to Permitted Encumbrances and the Borrower shall have failed to remedy such default within five (5) Business Days of receipt of notice thereof from the Agent; or
- (xvii) the occurrence of a Material Adverse Effect, other than the Specified Default; or
- (xviii) should any event of default arise under the Subordinated Credit Agreement, except as a result of the Specified Default or to the extent any enforcement right or remedy in respect of such event of default

would be subject to the Standstill Period (as defined in the Intercreditor Agreement); or

- (xix) if a Change of Control shall occur; or
- (xx) the institution of any steps by any Obligor or any applicable regulatory authority to terminate a Canadian Pension Plan if, as a result of such termination, any such Obligor may be required to make an additional contribution to such Canadian Pension Plan or to incur an additional liability or obligation to such Canadian Pension Plan, equal to or in excess of \$500,000; or
- (xxi) any of the following events shall occur or exist under ERISA with respect to any US Obligor or any member of a Controlled Group: (i) any Reportable Event shall occur; (ii) complete or partial withdrawal from any Multiemployer Plan shall occur; (iii) a notice of intent to terminate a US Pension Plan shall be filed, or a US Pension Plan shall be terminated, in either case, which could reasonably be expected to create material liability for any Obligor; or (iv) circumstances exist which would reasonably be expected to constitute grounds entitling the PBGC to institute proceedings to terminate a US Pension Plan, or the PBGC shall institute such proceedings; and in each case above, such event or condition (together with all other events or conditions identified above), could subject such US Obligor to any tax, penalty or other liability (including on account of its membership in a Controlled Group at the relevant time) which would reasonably be expected to result in an additional liability or obligation in excess of \$500,000; or
- (xxii) should [REDACTED] North America elect to terminate the [REDACTED] Contract due to reasons deemed to be the fault of the Borrower; or
- (xxiii) should the [REDACTED] PET Line #1 and [REDACTED] Carton Line #4 not be commercially operational by January 31, 2025 and February 28, 2025, respectively; or
- (xxiv) if any report of the Auditor with respect to the Borrower's audited financial statement contains any going concern qualification which is unacceptable to the Lenders acting reasonably.

## **12.2 Acceleration and Termination of Rights**

If any Event of Default shall occur and be continuing, all Obligations owing by the Borrower under the Loan Documents shall, at the option of the Agent, upon the request of the Majority Lenders, become immediately due and payable, provided that, at the request of the applicable Lender or Lenders, any obligations, contingent or otherwise, arising under Hedge Arrangements owing to the Lenders shall be cash collateralized and secured in a manner satisfactory to the Agent and the Lenders party thereto with interest thereon, at the rate or rates determined as herein provided, to the date of actual payment thereof, all without notice, presentment, protest, demand, notice of dishonour or any other demand or notice whatsoever, all of which are hereby expressly waived by each Obligor; provided, if any Event of Default described in Section 12.1(x) through (xii) with respect to the Borrower shall occur, the

Commitments (if not theretofore terminated) shall automatically terminate and the outstanding principal amount of all Advances and all other Obligations shall automatically be and become immediately due and payable. In such event the Agent may, on behalf of the Lenders, exercise any right or recourse and/or proceed by any action, suit, remedy or proceeding against any Obligor authorized or permitted by law for the recovery of all the Obligations of the Borrower to the Lenders and proceed to exercise any and all rights hereunder and under the Security and no such remedy for the enforcement of the rights of the Lenders shall be exclusive of or dependent on any other remedy but any one or more of such remedies may from time to time be exercised independently or in combination.

### **12.3            Payment of Letters of Credit**

If the Borrower does not pay to the Agent for the account of the Lenders the face amount of any unexpired Letter of Credit required to be paid pursuant to Section 12.2, the Agent on behalf of the Lenders shall have the option at any time without notice to the Borrower to give notice to the Lenders to make an Advance to the Borrower equal to the face amount of all unexpired Letters of Credit. The proceeds of such Advance shall be held by the Agent in a cash collateral account for the benefit of the Borrower and shall be applied in payment of such Letters of Credit if payment is required thereunder or otherwise as the Agent may require. The Borrower shall execute and deliver as security for such Advance all such security as the Lenders may deem necessary or advisable including, without limitation, an assignment of credit balance in respect of such cash collateral account.

### **12.4            Remedies Cumulative and Waivers**

For greater certainty, it is expressly understood and agreed that the respective rights and remedies of the Lenders and the Agent hereunder or under any other Loan Document or instrument executed pursuant to this Agreement are cumulative and are in addition to and not in substitution for any rights or remedies provided by law or by equity; and any single or partial exercise by the Lenders or by the Agent of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in this Agreement or other document or instrument executed pursuant to this Agreement shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which any one or more of the Lenders and the Agent may be lawfully entitled for such default or breach. Any waiver by the Lenders or the Agent of the strict observance, performance or compliance with any term, covenant, condition or other matter contained herein and any indulgence granted, either expressly or by course of conduct, by the Lenders or the Agent shall be effective only in the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any rights and remedies of the Lenders or the Agent under this Agreement or any other Loan Document or instrument executed pursuant to this Agreement as a result of any other default or breach hereunder or thereunder.

### **12.5            Termination of Lenders' Obligations**

The occurrence of an Event of Default shall relieve the Lenders of all obligations to provide any further Advances hereunder whether by Rollover, Conversion or otherwise, by way of Letters of Credit; provided that the foregoing shall not prevent the Lenders from disbursing money hereunder in reduction of then outstanding Letters of Credit. For greater certainty any such Advances shall be at the sole discretion of the Lenders. During the

existence of an Event of Default, the Agent may reallocate all Advances *pro rata* among the Lenders in such manner as the Agent determines is equitable.

## **12.6            Saving**

The Lenders shall not be under any obligation to the Borrower or any other Person to realize any collateral or enforce the Security or any part thereof or to allow any of the collateral to be sold, dealt with or otherwise disposed of. The Lenders shall not be responsible or liable to the Obligors or any other Person for any loss or damage upon the realization or enforcement of, the failure to realize or enforce the collateral or any part thereof or the failure to allow any of the collateral to be sold, dealt with or otherwise disposed of or for any act or omission on their respective parts or on the part of any director, officer, agent, servant or adviser in connection with any of the foregoing, except that a Lender may be responsible or liable for any loss or damage arising from the wilful misconduct or negligence of that Lender.

## **12.7            Perform Obligations**

If an Event of Default has occurred and is continuing and if the Borrower has failed to perform any of its covenants or agreements in the Loan Documents, the Majority Lenders, may, but shall be under no obligation to, instruct the Agent on behalf of the Lenders to perform any such covenants or agreements in any manner deemed fit by the Majority Lenders without thereby waiving any rights to enforce the Loan Documents. The reasonable expenses (including any legal costs) paid by the Agent and the Lenders in respect of the foregoing shall be an Obligation and shall be secured by the Security.

## **12.8            Third Parties**

No Person dealing with the Lenders or any agent of the Lenders shall be required to inquire whether the Security has become enforceable, or whether the powers which the Lenders or the Agent are purporting to exercise have been exercisable, or whether any Obligations remain outstanding upon the security thereof, or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made, or otherwise as to the propriety or regularity of any sale or other disposition or any other dealing with the collateral charged by such Security or any part thereof.

## **12.9            Set-Off or Compensation**

If an Event of Default has occurred and is continuing, each of the Lenders and each of their respective Affiliates is hereby authorized at any time and from time to time to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of any Obligor against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender has made any demand under this Agreement or any other Loan Document and although such obligations of the Obligor may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each the Lenders and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff, consolidation of accounts and bankers' lien) that the Lenders or their respective Affiliates may have. Each Lender agrees to promptly notify the Borrower and the Agent after any such setoff

and application, but the failure to give such notice shall not affect the validity of such setoff and application. If any Affiliate of a Lender exercises any rights under this Section 12.9, it shall share the benefit received in accordance with Section 14.20 as if the benefit had been received by the Lender of which it is an Affiliate.

#### **12.10      Realization of Security**

Each of the Lenders acknowledges that the Agent holds the Security to secure all of the Obligations and upon the event of the occurrence of an Event of Default, the Agent shall act on the written instructions of the Majority Lenders as provided in this Agreement and shall distribute the net sale proceeds of realization of the Security to the Lenders in accordance with their Proportionate Share of the Obligations and in accordance with Section 12.11.

#### **12.11      Application of Payments**

Notwithstanding any other provision of this Agreement, the proceeds of realization of the Security or any portion thereof shall be distributed in the following order:

- (a) first, against the Obligations owing to the Revolving D ~~Lender~~Lenders pursuant to the Revolving D Facility;
- (b) second, in payment of all costs and expenses incurred by the Agent in connection with such realization, including, but not limited to, legal, accounting, financial advisors, appraisers and receivers' fees and disbursements;
- (c) third, in payment of all costs and expenses incurred by the Lenders in connection with such realization, including, but not limited to, legal, accounting, financial advisors, appraisers and receivers' fees and disbursements;
- (d) fourth, against the Obligations to each Lender (but with respect to Hedge Arrangements, limited to Qualifying Hedge Arrangements) in accordance with its Proportionate Share;
- (e) fifth, against all other Obligations owing to the Lenders pursuant to Hedge Arrangements that were not paid in Section (d) above to each Lender based on the amount owing to such Lender divided by the aggregate amount owing to all Lenders; and
- (f) sixth, if all Obligations of the Borrower listed above have been paid and satisfied in full, any surplus proceeds of realization shall be paid to the Borrower unless otherwise required in accordance with Applicable Law.

#### **12.12      Consultant**

The Borrower agrees that, at any time after the occurrence of and during the continuance of an Event of Default and upon written request delivered by the Agent, it shall appoint a financial consultant (hereinafter referred to as the "**Consultant**") for the purposes of reviewing the operations of the Obligors from time to time thereafter. The terms of the Consultant's scope of duties, including appropriate covenants regarding confidentiality, shall be settled by the Agent with the consent of the Borrower, provided that such terms may be settled by the Agent and the Lenders if agreement with the Borrower is not reached within five (5) days of the date of the Agent's request. The Borrower consents, and shall cause each Obligor to

consent, at all times to a free exchange of information or the particulars of any such information exchanged at any time.

## **ARTICLE 13**

### **COSTS, EXPENSES AND INDEMNIFICATION**

#### **13.1 Indemnification by the Borrower**

(a) The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Agent including, but not limited to the reasonable and documented fees, charges and disbursements for counsel for the Agent, in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable out-of-pocket expenses incurred by the Agent, any Lender or the Issuing Lender, including but not limited to financial advisors, appraisers and other consultants or service providers retained by the Agent and/or the reasonable and documented fees, charges and disbursements of counsel, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section 13.1, or in connection with the Advances made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout restructuring or negotiations in respect of such Advances or Letters of Credit.

(b) The Borrower shall indemnify the Agent (and any sub-agent thereof), each Lender and the Issuing Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including but not limited to the reasonable and documented fees, charges and disbursements of any counsel, financial advisors, appraisers and/or other consultants or service providers retained for any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Obligor arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance or non-performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation or non-consummation of the transactions contemplated hereby or thereby, (ii) any Advance or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Lender to honour a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Obligor, or any Environmental Liability related in any way to any Obligor, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by an Obligor and regardless of whether any Indemnitee is a party thereto, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (w) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence, fraud or wilful misconduct of an Indemnitee, (x) result from a claim brought by the Borrower or any other Obligor against an Indemnitee for breach in bad faith of such Indemnitee’s obligations

hereunder or under any other Loan Document, if the Obligor has obtained a final and non-appealable judgment in its favour on such claim as determined by a court of competent jurisdiction, or (y) have resulted solely from a dispute among Indemnitees that does not involve an act or omission by the Borrower or any other Obligor (other than any claims against an Indemnatee in its capacity or in fulfilling its role as an administrative agent or arranger or any similar role under this Agreement), or (z) in respect of matters specifically addressed in Sections 15.1, 15.2 and 13.1(a). Notwithstanding the foregoing, this Section 13.1 shall not apply with respect to Taxes other than Taxes that represent losses, liability, claims, and damages arising from any non-Tax claim. The indemnity contained herein shall survive the termination of the Commitments.

### **13.2            Reimbursement by Lenders**

To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under Section 13.1 to be paid by them to the Agent (or any sub-agent thereof), the Issuing Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Agent (or any such sub-agent), the Issuing Lender or such Related Party, as the case may be, such Lender's Proportionate Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent (or any such sub-agent) or the Issuing Lender, or against any Related Party of any of the foregoing acting for the Agent (or any such sub-agent) or the Issuing Lender in connection with such capacity. The obligations of the Lenders under this Section 13.2 are subject to the other provisions of this Agreement concerning several liability of the Lenders.

### **13.3            Waiver of Consequential Damages**

To the fullest extent permitted by Applicable Law, the Obligors shall not assert, and hereby waive, any claim against any Indemnatee, on any theory of liability, for indirect, consequential, punitive, aggravated or exemplary damages (as opposed to direct damages) arising out of, in connection with, or as a result of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby (or any breach thereof), the transactions contemplated hereby or thereby, any Advance or Letter of Credit or the use of the proceeds thereof. No Indemnatee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

### **13.4            Payments**

All amounts due under this Section shall be payable promptly after demand therefor. A certificate of the Agent or a Lender setting forth the amount or amounts owing to the Agent, Lender or a sub-agent or Related Party, as the case may be, as specified in this Section, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrower shall be conclusive absent manifest error.



**ARTICLE 14****THE AGENT AND THE LENDERS****14.1      Appointment and Authority**

Each of the Lenders and the Issuing Lender hereby irrevocably appoints BNS as the Agent to act on its behalf as the Agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agent, the Lenders and the Issuing Lender, and no Obligor shall have rights as a third party beneficiary of any of such provisions.

**14.2      Rights as a Lender**

The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Obligor or any Affiliate thereof as if such Person were not the Agent and without any duty to account to the Lenders.

**14.3      Exculpatory Provisions**

(a) The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agent:

- (i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
- (ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents), but the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or Applicable Law; and
- (iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the person serving as the Agent or any of its Affiliates in any capacity.

(b) The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Majority Lenders (or such other number or percentage of the Lenders as is necessary, or as the Agent believes in good faith is necessary, under the provisions of the Loan Documents) or (ii) in the absence of its own gross negligence or wilful misconduct. The Agent shall be deemed not to have knowledge of any Default unless and until notice describing the Default is given to the Agent by the Borrower or a Lender.

(c) Except as otherwise expressly specified in this Agreement the Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition specified in this Agreement, other than to confirm receipt of items expressly required to be delivered to the Agent.

#### **14.4 Reliance by Agent**

The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of an Advance, or the issuance of a Letter of Credit that by its terms must be fulfilled to the satisfaction of a Lender or the Issuing Lender, the Agent may presume that such condition is satisfactory to such Lender or the Issuing Lender unless the Agent shall have received notice to the contrary from such Lender or the Issuing Lender prior to the making of such Advance or the issuance of such Letter of Credit. The Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

#### **14.5 Indemnification of Agent**

Each Lender agrees to indemnify the Agent and hold it harmless (to the extent not reimbursed by the Borrower), rateably according to its Proportionate Share (and not jointly or jointly and severally) from and against any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel, which may be incurred by or asserted against the Agent in any way relating to or arising out of the Loan Documents or the transactions therein contemplated. However, no Lender shall be liable for any portion of such losses, claims, damages, liabilities and related expenses resulting from the Agent's gross negligence or wilful misconduct.

#### **14.6 Delegation of Duties**

The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more

sub-agents appointed by the Agent from among the Lenders (including the Person serving as Agent) and their respective Affiliates. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The provisions of this Article and other provisions of this Agreement for the benefit of the Agent shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

#### **14.7            Replacement of Agent**

(a)        The Agent may at any time give notice of its resignation to the Lenders, the Issuing Lender and the Borrower. Upon receipt of any such notice of resignation, the Majority Lenders shall have the right in consultation with the Borrower, to appoint a successor, which shall be a Lender having a Commitment to a revolving credit if one or more is established in this Agreement and having an office in Toronto, Ontario, or an Affiliate of any such Lender with an office in Toronto, Ontario. The Agent may also be removed at any time by the Majority Lenders upon thirty (30) days' notice to the Agent and the Borrower as long as the Majority Lenders, in consultation with the Borrower, appoint and obtain the acceptance of a successor within such thirty (30) days, which shall be a Lender having a Commitment to a revolving credit if one or more is established in this Agreement and having an office in Toronto, Ontario, or an Affiliate of any such Lender with an office in Toronto, Ontario.

(b)        If no such successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within thirty (30) days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent meeting the qualifications specified in Section 14.1, provided that if the Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time as the Majority Lenders appoint a successor Agent as provided for above in the preceding paragraph.

(c)        Upon a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the former Agent, and the former Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided in the preceding paragraph). The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the termination of the service of the former Agent, the provisions of this Article 14 and of Article 13 shall continue in effect for the benefit of such former Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the former Agent was acting as Agent.

#### **14.8            Non-Reliance on Agent and Other Lenders**

Each Lender and the Issuing Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and

based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the Issuing Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

#### **14.9            Collective Action of the Lenders**

Each of the Lenders hereby acknowledges that to the extent permitted by Applicable Law, any collateral security and the remedies provided under the Loan Documents to the Lenders are for the benefit of the Lenders collectively and acting together and not severally and further acknowledges that its rights hereunder and under any collateral security are to be exercised not severally, but by the Agent upon the decision of the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents). Accordingly, notwithstanding any of the provisions contained herein or in any collateral security, each of the Lenders hereby covenants and agrees that it shall not be entitled to take any action hereunder or thereunder including, without limitation, any declaration of default hereunder or thereunder but that any such action shall be taken only by the Agent with the prior written agreement of the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents). Each of the Lenders hereby further covenants and agrees that upon any such written agreement being given, it shall co-operate fully with the Agent to the extent requested by the Agent. Notwithstanding the foregoing, in the absence of instructions from the Lenders and where in the sole opinion of the Agent, acting reasonably and in good faith, the exigencies of the situation warrant such action, the Agent may without notice to or consent of the Lenders take such action on behalf of the Lenders as it deems appropriate or desirable in the interest of the Lenders.

#### **14.10          No Other Duties, etc.**

Anything herein to the contrary notwithstanding, none of the “bookrunners”, “arrangers” or holders of similar titles, if any, specified in this Agreement shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Agent or a Lender hereunder.

#### **14.11          Payments by the Borrower**

(a) Prior to an Event of Default that is continuing, all payments made by or on behalf of the Borrower pursuant to this Agreement will be made to and received by the Agent on behalf of the Lenders and will be distributed by the Agent to the Lenders as soon as possible upon receipt by the Agent. Subject to Sections 8.2 and 12.11, unless otherwise specified herein, the Agent will distribute to the Lenders in accordance with each Lender’s Proportionate Share:

- (i) payments of interest and standby fees;
- (ii) costs and expenses;
- (iii) repayments of principal;

- (iv) prepayments of principal;
- (v) amounts received by the exercise of any right of set-off, consolidation of accounts, or by counterclaim or cross-action; and
- (vi) all other payments received by the Agent.

#### **14.12      Knowledge and Required Action**

The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default (other than the non-payment of any principal, interest or other amount to the extent the same is required to be paid to the Agent for the account of the Lenders) unless the Agent has received notice from a Lender or the Borrower specifying such Default or Event of Default and stating that such notice is given pursuant to this Section. In the event that the Agent receives such a notice, it shall give prompt notice thereof to the Lenders, and shall also give prompt notice to the Lenders of each non-payment of any amount required to be paid to the Agent for the account of the Lenders. The Agent shall, subject to Section 14.13 take such action with respect to such Default or Event of Default as shall be directed by the Lenders in accordance with this Article 13 provided that, unless and until the Agent shall have received such direction the Agent may, but shall not be obliged to, take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interest of the Lenders; and provided further that the Agent in any case shall not be required to take any such action which it determines to be contrary to the Loan Documents or to any Applicable Law.

#### **14.13      Request for Instructions**

The Agent may at any time request instructions from the Lenders with respect to any actions or approvals which, by the terms of any of the Loan Documents, the Agent is permitted or required to take or to grant, and the Agent shall be absolutely entitled to refrain from taking any such action or to withhold any such approval and shall not be under any liability whatsoever as a result thereof until it shall have received such instructions from the Lenders. No Lender shall have any right of action whatsoever against the Agent as a result of the Agent acting or refraining from acting under the Loan Documents in accordance with instructions from the Lenders. The Agent shall in all cases be fully justified in failing or refusing to take or continue any action under the Loan Documents unless it shall have received further assurances to its satisfaction from the Lenders of their indemnification obligations under Section 14.5 against any and all liability and expense which may be incurred by it by reason of taking or continuing to take such action, and unless it shall be secured in respect thereof as it may deem appropriate.

#### **14.14      Actions by Lenders**

(a) Any consent, approval (including without limitation any approval or authorization for any amendment to any of the Loan Documents), instruction or other expression of the Lenders under any of the Loan Documents may be obtained by an instrument in writing signed in one or more counterparts by the Majority Lenders, or where required by Section 14.14(c) all of the Lenders (which instrument in writing, for greater certainty, may be delivered by facsimile or other electronic transmission).

(b) Any consent, approval (including without limitation any approval of or authorization for any amendment to any of the Loan Documents), instruction or other expression of the Lenders hereunder may also be included in a resolution that is submitted to a meeting or adjourned meeting of the Lenders duly called and held for the purpose of considering the same as hereinafter provided and shall be deemed to have been obtained if such resolution is passed by the affirmative vote of the Majority Lenders (or 100% in the event that there are only two Lenders) of the votes given on a poll of the Lenders with respect to such resolution. A meeting of Lenders may be called by the Agent and shall be called by the Agent upon the request of any two Lenders. Every such meeting shall be held in the City of Toronto or at such other reasonable place as the Agent may approve. At least seven (7) days' notice of the time and place of any such meeting shall be given to the Lenders and shall include or be accompanied by a draft of the resolutions to be submitted to such meeting, but the notice may state that such draft is subject to amendment at the meeting or any adjournment thereof. The Lenders who are present in person or by proxy at the time and place specified in the notice shall constitute a quorum. A person nominated in writing by the Agent shall be chairman of the meeting. Lenders representing no less than 60% of the outstanding Advances must be present at a meeting or adjourned meeting. Upon every poll taken at any such meeting every Lender who is present in person or represented by a proxy duly appointed in writing (who need not be a Lender) shall be entitled to one vote in respect of each \$1 of its Commitment. In respect of all matters concerning the convening, holding and adjourning of Lenders' meetings, the form, execution and deposit of instruments appointing proxies and all other relevant matters, the Agent may from time to time make such reasonable regulations not inconsistent with this subsection 14.14(b) as it shall deem expedient and any regulations so made by the Agent shall be binding upon the Borrower, the Agent and the Lenders.

(c) Notwithstanding subsection 14.14(a), but subject to Section 14.19(d), without the consent of all the Lenders the Agent may not take the following actions:

- (i) amend, modify, discharge, terminate or waive any of the terms of this Agreement if such amendment, modification, discharge, termination or waiver would increase the amount of the Credit Facilities, reduce the fees payable, reduce interest rates or other amounts payable with respect to the Credit Facilities, extend any date fixed for payment of principal, interest or other amounts payable relating to the Credit Facilities, extend the repayment dates of the Credit Facilities or change the definition of Majority Lenders or Applicable Margin (provided that the Majority Lenders may amend the definition of Total Debt to EBITDA Ratio or any of its constituent parts notwithstanding any effect on the Applicable Margin);
- (ii) amend Section 3.3;
- (iii) amend, modify, discharge, terminate or waive any of the Security (including a guarantee) if the effect is to release a material part of the Property subject thereto otherwise than pursuant to, or as permitted by, the terms hereof or thereof; or
- (iv) amend this Section 14.14(c).

(d) An instrument in writing from the Majority Lenders (any such instrument in writing being an "**Approval Instrument**") shall (subject to the terms of Section 14.14(c)) be binding upon all of the Lenders, and the Agent (subject to the provisions for its indemnity contained in

this Agreement) shall be bound to give effect thereto accordingly. For greater certainty, to the extent so authorized in the Approval Instrument, the Agent shall be entitled (but not obligated) to execute and deliver on behalf of the Agent and all of the Lenders, without the requirement for the execution by any other Lender or Lenders, any consents, waivers, documents or instruments (including without limitation any amendment to any of the Loan Documents) necessary or advisable in the opinion of the Agent to give effect to the matters approved by the Majority Lenders or all of the Lenders, as the case may be, in any Approval Instrument.

(e) In the event that in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 14.14(c), the consent of the Majority Lenders shall have been obtained but the consent of one or more of such other Lenders (each a **"Non Consenting Lender"**) whose consent is required shall not have been obtained; then, with respect to each Non Consenting Lender (the **"Terminated Lender"**) the Borrower may, by giving written notice to the Agent and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Advances and its Revolving Facility Commitment, Swingline Facility Commitment, if any, in full to one or more Eligible Assignees (each a **"Replacement Lender"**) in accordance with the provisions of this Agreement and the Borrower shall pay the fees, if any, payable thereunder in connection with any assignment from the Non Consenting Lender; provided:

- (i) on the date of such assignment, the Replacement Lender shall pay to the Terminated Lender an amount equal to the sum of (a) an amount equal to the principal of, and all accrued interest on, all outstanding Advances of the Terminated Lender, (b) an amount equal to all unreimbursed drawings that have been funded by such Terminated Lender, together with all then unpaid interest with respect thereto at such time, and (c) an amount equal to all accrued, but theretofore unpaid fees owing to such Terminated Lender pursuant to this Agreement;
- (ii) on the date of such assignment, the Borrower shall pay any amounts payable to such Terminated Lender in respect to any Breakage Costs or otherwise owed as a consequence of such repayment or otherwise as if it were a prepayment; and
- (iii) each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non Consenting Lender;

provided, the Borrower may not make such election with respect to any Terminated Lender that is also the Issuing Lender unless, prior to the effectiveness of such election, the Borrower shall cause each outstanding Letter of Credit issued by the Issuing Lender to be cancelled or cash collateralized or otherwise supported in a manner satisfactory to the Issuing Lender. Upon the prepayment of all amounts owing to any Terminated Lender and the termination of such Terminated Lender's Revolving Facility Commitment, any, such Terminated Lender shall no longer constitute a "Lender" for purposes hereof; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender. Should there not be Replacement Lenders available to take an assignment of the outstanding Advances and the Revolving Facility Commitment and Swingline Facility Commitment, if any, of the Non Consenting Lender, the Borrower shall be entitled to repay in full the Non Consenting Lender

and terminate its Commitments from proceeds derived exclusively from the issuance of Equity Interests or the incurrence by the Borrower of Shareholder Subordinated Debt.

(f) The Agent is authorized, without further action by the Lenders, to release the Security and execute related documents in connection with a Permitted Disposition to the extent relating to the property subject to such disposition.

#### **14.15 Provisions for Benefit of Lenders Only**

The provisions of this Article 14, other than this Section 14.15, Section 14.7, Section 14.14(e) and the rights of the Borrower to receive notice as specified in this Article 14 relating to the rights and obligations of the Lenders and the Agent *inter se* shall be operative as between the Lenders and the Agent only, and the Obligor shall not have any rights under or be entitled to rely for any purposes upon such provisions.

#### **14.16 Payments by Agent**

(a) For greater certainty, the following provisions shall apply to any and all payments made by the Agent to the Lenders hereunder:

- (i) the Agent shall be under no obligation to make any payment (whether in respect of principal, interest, fees or otherwise) to any Lender until an amount in respect of such payment has been received by the Agent from the Borrower;
- (ii) if the Agent receives less than the full amount of any payment of principal, interest, fees or other amount owing by the Borrower under this Agreement, then subject to Section 8.2 and 12.11 the Agent shall have no obligation to remit to each Lender any amount other than such Lender's Proportionate Share of that amount which is the amount actually received by the Agent;
- (iii) if any Lender advances more or less than its Proportionate Share of Credit Facilities, such Lender's entitlement to such payment shall be increased or reduced, as the case may be, in proportion to the amount actually advanced by such Lender;
- (iv) the Agent acting reasonably and in good faith shall, after consultation with the Lenders in the case of any dispute, determine in all cases the amount of all payments to which each Lender is entitled and such determination shall, in the absence of manifest error, be binding and conclusive;
- (v) the Agent shall be entitled to round any Lender's Proportionate Share of mandatory or scheduled repayments to the nearest \$1,000;
- (vi) upon request, the Agent shall deliver a statement detailing any of the payments to the Lenders referred to herein; and
- (vii) all payments by the Agent to a Lender hereunder shall be made to such Lender at its address set forth in the signature pages on this Agreement



or on the applicable Assignment and Assumption unless notice to the contrary is received by the Agent from such Lender.

(b) Unless the Agent has actual knowledge that the Borrower has not made or will not make a payment to the Agent for value on the date in respect of which the Borrower has notified the Agent that the payment will be made and except to the extent that the Agent has received notice under Section 8.2, the Agent shall be entitled to assume that such payment has been or will be received from the Borrower when due and the Agent may (but shall not be obliged to), in reliance upon such assumption, pay the Lenders corresponding amounts. If the payment by the Borrower is in fact not received by the Agent on the required date and the Agent has made available corresponding amounts to the Lenders, the Borrower shall, without limiting its other obligations under this Agreement, indemnify the Agent against any and all liabilities, obligations, losses (other than loss of profit), damages, penalties, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on or incurred by the Agent as a result. A certificate of the Agent with respect to any amount owing by the Borrower under this Section shall be *prima facie* evidence of the amount owing in the absence of manifest error.

#### **14.17 Acknowledgements, Representations and Covenants of Lenders**

(a) Each Lender represents and warrants that it has the legal capacity to enter into this Agreement pursuant to its charter and any applicable legislation and has not violated its charter, constating documents or any applicable legislation by so doing.

(b) Each of the Lenders acknowledges and confirms that in the event that the Agent does not receive payment in accordance with this Agreement, it shall not be the obligation of the Agent to maintain the Credit Facilities in good standing nor shall any Lender have recourse to the Agent in respect of any amounts owing to such Lender under this Agreement.

(c) Each Lender acknowledges and agrees that its obligation to advance its Proportionate Share of Advances in accordance with the terms of this Agreement is independent and in no way related to the obligation of any other Lender hereunder.

(d) Each Lender hereby acknowledges receipt of a copy of this Agreement and acknowledges that it is satisfied with the form and content of such documents.

(e) Except to the extent recovered by the Agent from the Borrower, promptly following demand therefor, each Lender shall pay to the Agent an amount equal to such Lender's Proportionate Share of any and all reasonable costs, expenses, claims, losses and liabilities incurred by the Agent in connection with this Agreement except for those incurred by reason of the Agent's negligence or wilful misconduct.

(f) Each Lender shall respond promptly to each request by the Agent for the consent of such Lender required hereunder.

(g) Each Lender that assigns all or a portion of its rights and obligations under this Agreement shall pay to the Agent a processing and recordation fee of \$3,500 with respect to each such assignment in accordance with Section 16.2(f).

**14.18        Rights of Agent**

(a) In administering the Credit Facilities, the Agent may retain, at the expense of the Lenders if such expenses are not recoverable from the Borrower, such solicitors, counsel, auditors and other experts and agents as the Agent may select, in its sole discretion, acting reasonably and in good faith after consultation with the Lenders.

(b) The Agent shall be entitled to rely on any communication, instrument or document believed by it to be genuine and correct and to have been signed by the proper individual or individuals, and shall be entitled to rely and shall be protected in relying as to legal matters upon opinions of independent legal advisors selected by it. The Agent may also assume that any representation made by the Borrower is true and that no Default or Event of Default has occurred unless the officers or employees of the Lender acting as Agent, active in their capacity as officers or employees responsible for the Borrower's account, have actual knowledge to the contrary or have received notice to the contrary from any other party to this Agreement.

(c) Except in its own right as a Lender, the Agent shall not be required to advance its own funds for any purpose, and in particular, shall not be required to pay with its own funds insurance premiums, taxes or public utility charges or the cost of repairs or maintenance with respect to the assets which are the subject matter of the Security, nor shall it be required to pay with its own funds the fees of solicitors, counsel, auditors, experts or agents engaged by it as permitted hereby.

(d) The Agent may round an individual Lender's Proportionate Share of any Advance to the nearest \$100,000 in Canadian Dollars or United States Dollars, as the case may be.

(e) The Agent shall be entitled to scan and provide by email to the Lenders all financial information it receives from the Borrower pursuant to Section 10.3.

**14.19        Non-Funding Lenders**

(a) Each Non-Funding Lender shall be required to provide to the Agent (A) cash or Cash Equivalents in an amount equal to 105% of such Non-Funding Lender's Proportionate Share of the face amount of outstanding Letters of Credit, and (B) cash or Cash Equivalents in an amount, as shall be determined from time to time by the Agent in its discretion, equal to all other obligations of such Non-Funding Lender to the Agent that are owing or may become owing pursuant to this Agreement, including, without limitation, such Non-Funding Lender's obligation to pay its Proportionate Share of any indemnification or expense reimbursement amounts not paid by the Borrower. Such cash or Cash Equivalents shall be held by Agent in one or more cash collateral accounts which accounts shall be in the name of the Agent and shall not be required to be interest bearing. The Agent shall be entitled to apply the foregoing cash and Cash Equivalents in accordance with Section 12.11. Notwithstanding anything in this Agreement to the contrary, so long as there is a Non-Funding Lender it shall be within the sole and joint determination of the Issuing Lender as to whether it is agreeable to issue any new Letters of Credit or extend or renew any expiring Letters of Credit.

(b) Neither Agent nor any of its Affiliates nor any of their respective officers, directors, employees, agents or representatives shall be liable to any Lender (including, without limitation, a Non-Funding Lender) for any action taken or omitted to be taken by it in connection

with amounts payable by the Borrower to a Non-Funding Lender and received and deposited by Agent in a cash collateral account and applied in accordance with the provisions of this Agreement save and except for the gross negligence or wilful misconduct of the Agent as determined by a final non-appealable judgment of a court of competent jurisdiction.

(c) The Agent shall be entitled to set off any Non-Funding Lender's Proportionate Share of all payments received from the Borrower against such Non-Funding Lender's obligations to fund payments and Advances required to be made by it and to purchase participations required to be purchased by it in each case under this Agreement and the other Loan Documents. The Agent shall be entitled to withhold and deposit in one or more non-interest bearing cash collateral accounts in the name of the Agent all amounts (whether principal, interest, fees or otherwise) received by Agent and due to a Non-Funding Lender pursuant to this Agreement which amounts shall be used by Agent (A) first, to reimburse (I) the Agent for any amounts owing to it by the Non-Funding Lender pursuant to any Loan Document, and then to reimburse (II) the Issuing Lender for any amounts paid by it that has not been fully reimbursed due to such Non-Funding Lender not funding its Proportionate Share of the applicable Advance, (B) second, to repay any Advances made by a Lender in order to fund a shortfall created by a Non-Funding Lender which repayment shall be in the form of an assignment by each such Lender of such Advance to the Non-Funding Lender, (C) third, (I) first, to cash collateralize all other obligations of such Non-Funding Lender to the Agent owing pursuant to this Agreement in such amount as shall be determined from time to time by the Agent in its discretion including, without limitation, such Non-Funding Lender's obligation to pay its Proportionate Share of any indemnification or expense reimbursement amounts not paid by the Borrower and (II), second, to maintain cash collateral for a Non-Funding Lender's Proportionate Share of reimbursement obligations for Letters of Credit, and (D) fourth, at the Agent's discretion, to fund from time to time the Non-Funding Lender's Proportionate Share of Advances under the Revolving Facility.

(d) For certainty, a Non-Funding Lender will have no voting or consent rights with respect to matters under this Agreement or other Loan Documents. Accordingly, the Commitments and the aggregate unpaid principal amount of the Advances owing to any Non-Funding Lender shall be disregarded in determining Majority Lenders and all Lenders or all affected Lenders. A Non-Funding Lender shall not be entitled to receive standby fees. For certainty, the Lenders shall not be permitted to amend this Agreement in a manner that would (i) have the effect of reducing the rate of interest or fees applicable to the Advances made by a Non-Funding Lender, or (ii) reducing the principal amount owing to a Non-Funding Lender, unless in each case the same reduction also applies to Lenders with the same Commitments. Notwithstanding the foregoing, should a Non-Funding Lender (i) fund all outstanding Advances that it previously failed to fund and pay all other amounts owing to Agent, and (ii) confirm in writing to the Agent that there is no reasonable likelihood that it will subsequently again become a Non-Funding Lender, then such Lender shall thereafter (x) be entitled to vote and shall have consent rights, and (y) be entitled to receive standby fees, in the same manner and fashion as if it were not a Non-Funding Lender.

#### **14.20 Sharing of Payments by Lenders**

If any Lender, by exercising any right of setoff or counterclaim or otherwise, obtains any payment or other reduction that might result in such Lender receiving payment or other reduction of a proportion of the aggregate amount of its Advances and accrued interest thereon or other obligations hereunder greater than its *pro rata* share thereof as provided herein, then the Lender receiving such payment or other reduction shall (a) notify the Agent of

such fact, and (b) purchase (for cash at face value) participations in the Advances and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders rateably in accordance with the aggregate amount of principal of and accrued interest on their respective Advances and other amounts owing them, provided that:

- (a) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest;
- (b) the provisions of this Section shall not be construed to apply to (x) any payment made by any Obligor pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Advances or participation in disbursements under Letters of Credit to any assignee or participant, other than to any Obligor or any Affiliate of an Obligor (as to which the provisions of this Section shall apply); and
- (c) the provisions of this Section shall not be construed to apply to (w) any payment made while no Event of Default has occurred and is continuing in respect of obligations of the Borrower to such Lender that do not arise under or in connection with the Loan Documents, (x) any payment made in respect of an obligation that is secured by a Permitted Encumbrance or that is otherwise entitled to priority over the Borrower's obligations under or in connection with the Loan Documents, (y) any reduction arising from an amount owing to an Obligor upon the termination of derivatives entered into between the Obligor and such Lender, or (z) any payment to which such Lender is entitled as a result of any form of credit protection obtained by such Lender.

#### **14.21      Agent's Clawback**

(a)      Funding by Lenders: Presumption by Agent Unless the Agent shall have received notice from a Lender prior to the proposed date of any advance of funds that such Lender will not make available to the Agent such Lender's share of such advance, the Agent may assume that such Lender has made such share available on such date in accordance with the provisions of this Agreement concerning funding by Lenders and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event if a Lender has not in fact made its share of the applicable advance available to the Agent, then the applicable Lender shall pay to the Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Agent, at a rate determined by the Agent in accordance with prevailing banking industry practice on Interbank compensation. If such Lender pays such amount to the Agent, then such amount shall constitute such Lender's Advance included in such advance. If the Lender does not do so forthwith, the Borrower shall pay to the Agent forthwith on demand such corresponding amount with interest thereon at the interest rate applicable to the advance in question. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that has failed to make such payment to the Agent.

(b)      Payments by Borrower: Presumptions by Agent Unless the Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Agent

for the account of any Lender hereunder that the Borrower will not make such payment the Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute the amount due to the Lenders. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at a rate determined by the Agent in accordance with prevailing banking industry practice on Interbank compensation.

#### **14.22      Erroneous Payments**

(a) Each Lender and each Issuing Lender hereby agrees that (i) if the Agent notifies such Lender or Issuing Lender that the Agent has determined in its sole discretion that any funds received by such Lender or Issuing Lender from the Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Lender or Issuing Lender (whether or not known to such Lender or Issuing Lender) (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, an “**Erroneous Payment**”) and demands the return of such Erroneous Payment (or a portion thereof), such Lender or Issuing Lender shall promptly, but in no event later than one (1) Business Day thereafter, return to the Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Lender or Issuing Lender to the date such amount is repaid to the Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation from time to time in effect and (ii) to the extent permitted by applicable law, such Lender or Issuing Lender shall not assert any right or claim to the Erroneous Payment, and hereby waives, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent for the return of any Erroneous Payments received, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine. A notice of the Agent to any Lender or any Issuing Lender under this Section 14.22(a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding Section 14.22(a), each Lender and each Issuing Lender hereby further agrees that if it receives an Erroneous Payment from the Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Agent (or any of its Affiliates) with respect to such Erroneous Payment (an “**Erroneous Payment Notice**”), (y) that was not preceded or accompanied by an Erroneous Payment Notice, or (z) that such Lender or Issuing Lender otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), in each case, an error has been made (and that it is deemed to have knowledge of such error at the time of receipt of such Erroneous Payment) with respect to such Erroneous Payment, and to the extent permitted by applicable law, such Lender or Issuing Lender shall not assert any right or claim to the Erroneous Payment, and hereby waives, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent for the return of any Erroneous Payments received, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine. Each Lender and each Issuing Lender agrees that, in each such case, it shall promptly (and, in all events, within one (1) Business Day of its knowledge (or deemed knowledge) of such error) notify the Agent of such occurrence and, upon demand from the Agent, it shall promptly, but in all events no later than one (1) Business Day thereafter, return to the Agent the amount of any

such Erroneous Payment (or portion thereof) as to which such a demand was made in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Lender or Issuing Lender to the date such amount is repaid to the Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(c) Each Borrower and each other Obligor hereby agrees that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Lender or Issuing Lender that has received such Erroneous Payment (or portion thereof) for any reason, the Agent shall be subrogated to all the rights of such Lender or Issuing Lender with respect to such amount and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by a Borrower or any other Obligor.

(d) Each party's obligations under this Section 14.22 shall survive the resignation or replacement of the Agent, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

## **ARTICLE 15**

### **TAXES AND CHANGE OF CIRCUMSTANCES**

#### **15.1      Increased Costs**

- (a) Increased Costs Generally If, from time to time, any Change in Law shall:
- (i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;
  - (ii) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Advance made by it, or change the basis of taxation of payments to such Lender in respect thereof, except for Indemnified Taxes or Other Taxes covered by Section 15.2 and the imposition, or any change in the rate, of any Excluded Tax payable by such Lender, or
  - (iii) impose on any Lender or any applicable interbank market any other condition, cost or expense affecting this Agreement or Advances made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Advance (or of maintaining its obligation to make any such Advance), or to increase the cost to such Lender or the Issuing Lender of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the Issuing Lender hereunder (whether of principal, interest or any other amount), then upon request of such Lender from time to time, the Borrower will pay to such Lender such additional

amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

Notwithstanding anything contained in this Agreement, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof and (ii) all requests, rules, regulations, guidelines or directives whether concerning capital adequacy or liquidity promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall, in each case, be deemed a "Change in Law" regardless of the date enacted, adopted, applied or issued.

(b) Capital and Liquidity Requirements If any Lender determines in its sole and absolute discretion, that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Advances made by, or the Letters of Credit issued or participated in by such Lender, to a level below that which such Lender or its holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of its holding company with respect to, as applicable, capital adequacy or liquidity requirements), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or its holding company for any such reduction suffered.

(c) Certificates for Reimbursement A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrower from time to time shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation, except that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered (i) more than six months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefore, unless the Change in Law giving rise to such increased costs or reductions is retroactive, in which case the six -month period referred to above shall be extended to include the period of retroactive effect thereof, and (ii) for which the Lender is not seeking similar compensation from similar borrowers.

## **15.2 Taxes**

(a) Payments Subject to Taxes Any and all payments by or on account of any obligations of any Obligor hereunder or under any Loan Document shall be made without deduction or withholding for any Taxes except as required by Applicable Law. If any Obligor, the Agent, any Lender or Issuing Lender is required by Applicable Law to deduct or withhold any Taxes in respect of any payment by or on account of any obligation of an Obligor hereunder or under any other Loan Document, then (i) if such Tax is an Indemnified Tax

(including any Other Tax), the sum payable shall be increased by that Obligor when payable as necessary so that after making or allowing for all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section) the Agent, Lender or Issuing Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions or withholdings been required, (ii) the applicable Withholding Agent shall be entitled to make any such deductions or withholdings required to be made by it under Applicable Law and (iii) the applicable Withholding Agent shall timely pay the full amount required to be deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law.

(b) Payment of Other Taxes by the Borrower Without limiting the provisions of paragraph (a) above, the Obligors shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Agent, timely reimburse it for the payment of, any Other Taxes.

(c) Indemnification by the Borrower The Borrower shall, indemnify the Agent, each Lender and the Issuing Lender, within ten (10) days after written demand therefor (specifying in reasonable detail the nature and the amount of the Indemnified Taxes or Other Taxes), for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted on payments to, or paid by, the Agent, such Lender or the Issuing Lender in respect of any payment by or on account of any obligation of an Obligor hereunder or any other Loan Document and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Evidence of Payments As soon as practicable after any payment of Indemnified Taxes or Other Taxes by an Obligor to a Governmental Authority, the Obligor shall deliver to the Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Agent.

(e) Treatment of Certain Refunds and Tax Reductions If the Agent or a Lender determines that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which an Obligor has paid additional amounts pursuant to this Section or that, because of the payment of such Taxes or Other Taxes, it has benefited from a reduction in Excluded Taxes otherwise payable by it, it shall pay to the applicable Borrower or Obligor, as applicable, an amount equal to such refund or reduction (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower or Obligor under this Section with respect to the Taxes or Other Taxes giving rise to such refund or reduction), net of all out-of-pocket expenses of the Agent or such Lender, as the case may be, and without interest (other than any net after-Tax interest paid by the relevant Governmental Authority with respect to such refund). The Borrower or Obligor as applicable, upon the request of the Agent or such Lender, agrees to repay the amount paid over to the Borrower or Obligor (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Agent or such Lender if the Agent or such Lender is required to repay such refund or reduction to such Governmental Authority. Notwithstanding anything to the contrary in this Section 15.2(e), in no event will the Agent or any Lender be required to pay any amount to the Borrower or an Obligor pursuant to this Section 15.2(e) the payment of which



would place such Agent or Lender in a less favourable after-Tax position than such Agent or Lender would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payment or additional amounts with respect to such Tax had been paid. This paragraph shall not be construed to require the Agent or any Lender to make available its tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrower or any other Person, to arrange its affairs in any particular manner or to claim any available refund or reduction.

(f) Status of Lenders To the extent that withholdings apply to any payment to be made to a Lender, any Lender that is entitled to an exemption from or reduction of any withholding Tax with respect to any payments hereunder or under any other Loan Document shall, to the extent it may lawfully do so, deliver to the Borrower and to the Agent, at the time or times reasonably requested by the Borrower or the Agent and at the time or times prescribed by Applicable Law, such properly completed and executed documentation reasonably requested by the Borrower or the Agent or prescribed by Applicable Law as will permit such payments to be made without withholding (including FATCA withholding, if applicable) or at a reduced rate of withholding. In addition, any Lender, if required by the Borrower or the Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or Agent as will enable the Borrower or the Agent to determine whether or not such Lender is subject to withholding, backup withholding or information reporting requirements. Each Lender shall, from time to time after the initial delivery by such Lender of the forms described above, at the request of the Agent or the Borrower or if any form or certification it previously delivered expires or becomes obsolete or inaccurate, (a) deliver to the Borrower and the Agent renewals, amendments or additional or successor forms, together with any other certificate or statement of exemption required in order to confirm or establish such Lender's status or that such Lender is entitled to an exemption from or reduction in withholding tax or (b) notify the Agent and the Borrower in writing of its inability to deliver any such forms, certificates or other evidence.

(g) Indemnification by the Lenders Each Lender shall severally indemnify the Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Obligor has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of Obligor to do so), and (ii) any Taxes (other than Indemnified Taxes) attributable to such Lender, in each case, that are payable or paid by the Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Agent to the Lender from any other source against any amount due to the Agent under this paragraph (7).

(h) Survival Each party's obligations under this Section 15.2 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge or all obligations under any Loan Document.

**15.3            Mitigation Obligations: Replacement of Lenders**

(a)     Designation of a Different Lending Office If any Lender requests compensation under Section 15.1, or requires the Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 15.2, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Advances hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 15.1 or 15.2, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b)     Replacement of Lenders If any Lender requests compensation under Section 15.1, if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 15.2, if any Lender's obligations are suspended pursuant to Section 15.4 or if any Lender defaults in its obligation to fund Advances hereunder, then the Borrower may, at its sole expense and effort, upon ten (10) days' notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Article 16), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

- (i)     the Borrower pays the Agent the assignment fee specified in Section 16.2(f);
- (ii)    the assigning Lender receives payment of an amount equal to the outstanding principal of its Advances and participations in disbursements under Letters of Credit, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any breakage costs and amounts required to be paid under this Agreement as a result of prepayment to a Lender) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);
- (iii)   in the case of any such assignment resulting from a claim for compensation under Section 15.1 or payments required to be made pursuant to Section 15.2, such assignment will result in a reduction in such compensation or payments thereafter; and
- (iv)    such assignment does not conflict with Applicable Law.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

**15.4      Illegality**

If any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make or maintain any Advance (or to maintain its obligation to make any Advance), or to participate in, issue or maintain any Letter of Credit (or to maintain its obligation to participate in or to issue any Letter of Credit), or to determine or charge interest rates based upon any particular rate, then, on notice thereof by such Lender to the Borrower through the Agent, any obligation of such Lender with respect to the activity that is unlawful shall be suspended until such Lender notifies the Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Agent), prepay or, if conversion would avoid the activity that is unlawful, convert any Advances, or take any necessary steps with respect to any Letter of Credit in order to avoid the activity that is unlawful. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

**ARTICLE 16****SUCCESSORS AND ASSIGNS AND ADDITIONAL LENDERS****16.1      Successors and Assigns Generally**

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Obligor may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations, hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 16.2, (ii) by way of participation in accordance with the provisions of Section 16.4, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 16.5 (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

**16.2      Assignment by Lenders**

Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Advances at the time owing to it); provided that:

- (a) except if an Event of Default has occurred and is continuing or in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Advances at the time owing to it or in the case of an assignment to a Lender or (in the case of the Term Facility) an Affiliate of a Lender, the aggregate amount of the Commitment being assigned (which for this

purpose includes Advances outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Advance of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000 (unless the Commitment or amount owing to such Lender under the applicable Credit Facility is less than \$5,000,000), unless each of the Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents to a lower amount (each such consent not to be unreasonably withheld or delayed);

- (b) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Advance or the Commitment assigned; except that this clause (2) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate credits on a non-*pro rata* basis;
- (c) any assignment of a Commitment relating to a credit under which Letters of Credit may be issued must be approved by any Issuing Lender (such approval not to be unreasonably withheld or delayed), unless the Person that is the proposed assignee is itself already a Lender with a Commitment under that credit;
- (d) any assignment must be approved by the Agent (such approval not to be unreasonably withheld or delayed);
- (e) any assignment must be approved by the Borrower acting reasonably (such approval not to be unreasonably withheld; provided that such approval shall not be considered to have been unreasonably withheld, if as a result of such approval, the Borrower would be required to pay an additional amount pursuant to Article 15) unless (A) the proposed assignee is already a Lender, or (B) an Event of Default has occurred and is continuing; and
- (f) the parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee in an amount specified elsewhere in this Agreement and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Agent pursuant to Section 16.3, from and after the Closing Date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement and the other Loan Documents, including any collateral security, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Article 13 and Article 15, and shall continue to be liable for any breach of this Agreement by such Lender, with respect to facts and circumstances occurring prior to the Closing Date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph (other than a

participation described in Section 16.4) shall be null and void as against the Borrower. Any payment by an assignee to an assigning Lender in connection with an assignment or transfer shall not be or be deemed to be a repayment by the Borrower or a new Advance to the Borrower.

### **16.3            Register**

The Agent shall maintain at one of its offices in Toronto, Ontario or Montreal, Quebec a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Advances owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

### **16.4            Participations**

(a) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Agent, sell participations to any Person (other than a natural person, an Obligor or any Affiliate of an Obligor) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Advances owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any payment by a Participant in connection with a sale of a participation shall not be or be deemed to be a repayment by the Borrower or a new Advance to the Borrower.

(b) The voting rights of any Participants shall (i) be limited to matters in respect of (a) increases in Commitments of such Participant, (b) reductions of principal, interest or fees payable to such Participant, (c) extensions of final maturity or scheduled amortization of the Advances or Commitments in which such Participant participates and (d) releases of all or substantially all of the value of the guarantees, or all or substantially all of the collateral (other than in accordance with Section 17.17) and (ii) for clarification purposes, not include the right to vote on waivers of Defaults or Events of Default.

(c) A Participant: (i) shall comply with the requirements of Section 15.2(f) as if it were a Lender, and (ii) shall not be entitled to receive any greater payment under Section 15.1 or 15.2 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant.

### **16.5            Certain Pledges**

Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under the Agreement to secure obligations of such Lender, but no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

**ARTICLE 17****GENERAL****17.1      Exchange and Confidentiality of Information**

The Borrower authorizes and consents to the reproduction, disclosure and use by the Agent and Lenders of information about the Borrower (including, without limitation, the Borrower's name and any identifying logos) and the transactions herein contemplated to enable the Agent and/or the Lenders to publish promotional "tombstones" and other forms of notices of the transactions contemplated herein in any manner and in any media (including, without limitation, brochures) and the reproduction, disclosure and use of such information shall be subject to the prior approval of the Borrower acting reasonably. The Borrower acknowledges and agrees that no compensation will be payable by the Agent or any Lender resulting therefrom, and that the Agent and the Lender shall have no liability whatsoever to the Borrower or any of its employees, officers, directors, affiliates or shareholders in obtaining and using such information in accordance with the terms hereof.

**17.2      Nature of Obligations under this Agreement**

(a) The obligations of each Lender and of the Agent under this Agreement are several and not joint and several. The failure of any Lender to carry out its obligations hereunder shall not relieve the other Lenders, the Agent or the Borrower of any of their respective obligations hereunder. Neither the entering into of this Agreement nor the completion of any transactions contemplated herein shall constitute the Lenders a partnership.

(b) Neither the Agent nor any Lender shall be responsible for the obligations of any other Lender hereunder.

**17.3      Addresses, Etc. for Notices**

(a) The addresses and telecopier numbers for the purposes of notices and other communications to the Borrower and the Agent are set out on the signatures pages and Schedules to this Agreement.

(b) Notices Generally Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 17.3(c)), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier to the addresses or telecopier numbers specified elsewhere in this Agreement or, if to a Lender, to it at its address or telecopier number specified in the Register or, if to an Obligor other than the Borrower, in care of the Borrower.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given on a business day between 9:00 a.m. and 5:00 p.m. local time where the recipient is located, shall be deemed to have been given at 9:00 a.m. on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in Section 17.3(c) below shall be effective as provided in Section 17.3(c).

(c) Electronic Communications Notices and other communications to the Lenders and the Issuing Lender hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided that the foregoing shall not apply to notices to any Lender of Advances to be made or Letters of Credit to be issued if such Lender has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Agent otherwise prescribes, (i) notices and other communications sent to an email address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(d) Change of Address, Etc. Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

#### **17.4 Governing Law and Submission to Jurisdiction**

(a) Governing Law This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein.

(b) Submission to Jurisdiction Each Obligor irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the courts of the Province of Ontario, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Obligor or its properties in the courts of any jurisdiction.

(c) Waiver of Venue Each Obligor irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in 17.4(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

## **17.5            Judgment Currency**

(a) If for the purpose of obtaining or enforcing judgment against the Borrower or any Obligor in any court in any jurisdiction, it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 17.5 referred to as the “**Judgment Currency**”) an amount due in Canadian Dollars or United States Dollars under this Agreement, the conversion shall be made at the rate of exchange prevailing on the Business Day immediately preceding:

- (i) the date of actual payment of the amount due, in the case of any proceeding in the courts of the Province of Ontario or in the courts of any other jurisdiction that will give effect to such conversion being made on such date; or
- (ii) the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 17.5(a)(ii) being hereinafter in this Section 17.5 referred to as the “**Judgment Conversion Date**”).

(b) If, in the case of any proceeding in the court of any jurisdiction referred to in Section 17.5(a)(ii), there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the Borrower shall pay such additional or lesser amount as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of Canadian Dollars or United States Dollars, as the case may be, which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date.

(c) Any amount due from the Borrower under the provisions of Section 17.5(b) shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this Agreement.

(d) The term “rate of exchange” in this Section 17.5 means the noon rate of exchange based on Canadian interbank transactions in Canadian Dollars or United States Dollars, as the case may be, in the Judgment Currency published or quoted by the Bank of Canada for the day in question, or if such rate is not so published or quoted by the Bank of Canada, such term shall mean the Equivalent Amount of the Judgment Currency.

## **17.6            Benefit of the Agreement**

This Agreement shall enure to the benefit of and be binding upon the Borrower, the Lenders, the Agent and their respective permitted successors and permitted assigns.

## **17.7            Survival**

The provisions of Article 13 shall survive the repayment of all Advances, whether on account of principal, interest or fees, and the termination of this Agreement, unless a specific release of such provisions by the Agent, on behalf of the Lenders, is delivered to the Borrower.



**17.8            Severability**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**17.9            Whole Agreement**

(a)     The Restated Credit Agreement, as amended and restated by this Agreement, and the other Loan Documents constitute the whole and entire agreement between the parties hereto and supersede any prior agreements, undertakings, declarations, representations, written or oral, in respect thereof.

(b)     This Agreement is an amendment and restatement of the Restated Credit Agreement. This Agreement does not discharge or constitute a novation of any debt or obligation contained in the Restated Credit Agreement or in any other Loan Document.

(c)     The Borrower hereby confirms and agrees that the Security Documents executed by it continue to secure all of the Obligations of the Borrower under or in connection with the Restated Credit Agreement as amended and restated by this Agreement and the other Loan Documents to which it is a party and that such Security Documents remain in full force and effect.

**17.10          Further Assurances**

The Borrower, each Lender and the Agent shall promptly cure any default by it in the execution and delivery of this Agreement, the Loan Documents or of any of the agreements provided for hereunder to which it is a party. The Borrower, at its expense, shall promptly execute and deliver to the Agent, upon reasonable request by the Agent, all such other and further documents, agreements, opinions, certificates and instruments in compliance with and required to give effect to the covenants and agreements of the Borrower hereunder or to make any recording, file any notice or obtain any consent contemplated herein.

**17.11          Waiver of Jury**

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

### **17.12      Counterpart; Integration; Effectiveness; Electronic Execution**

(a)      Counterparts; Integration; Effectiveness This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents and any separate letter agreements with respect to fees payable to the Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 3.1, this Agreement shall become effective when it has been executed by the Agent and when the Agent has received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

(b)      Electronic Execution The words “execution”, “signed”, “signature”, and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including Parts 2 and 3 of the *Personal Information Protection and Electronic Documents Act* (Canada), the *Electronic Commerce Act, 2000* (Ontario) and other similar federal or provincial laws based on the *Uniform Electronic Commerce Act* of the Uniform Law Conference of Canada or its *Uniform Electronic Evidence Act*, as the case may be.

### **17.13      Treatment of Certain Information; Confidentiality**

(a)      Each of the Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to it, its Affiliates and its Affiliates' respective partners, directors, officers, employees, agents and advisors on a need to know basis only (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority), (c) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap, derivative, credit-linked note or similar transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Agent or any Lender on a non-confidential basis from a source other than an Obligor.

(b)      For purposes of this Section, “Information” means all information received in connection with this Agreement from any Obligor relating to any Obligor or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Agent or any Lender on a non-confidential basis prior to such receipt. Any Person required to maintain the confidentiality of Information as provided in this Section shall be

considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. In addition, the Agent may disclose to any agency or organization that assigns standard identification numbers to loan facilities such basic information describing the facilities provided hereunder as is necessary to assign unique identifiers (and, if requested, supply a copy of this Agreement), if being understood that the Person to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to make available to the public only such Information as such person normally makes available in the course of its business of assigning identification numbers.

(c) In addition, and notwithstanding anything herein to the contrary, the Agent may provide the information described in Schedule H concerning the Borrower and the credit facilities established herein to Loan Pricing Corporation and/or other recognized trade publishers of information for general circulation in the loan market.

**17.14      Time of the Essence**

Time shall be of the essence of this Agreement.

**17.15      Delivery by Facsimile Transmission**

This Agreement may be executed and delivered by facsimile transmission or other electronic communication and each of the parties hereto may rely on such facsimile signature as though such facsimile signature were an original signature.

**17.16      Hypothecary Representative**

For greater certainty and without limiting the power of the Agent hereunder or under any other Loan Document, the Agent and each Lender hereby appoints and authorizes The Bank of Nova Scotia to act as hypothecary representative within the meaning of Article 2692 of the *Civil Code of Quebec* (in such capacity, the "**Hypothecary Representative**") of the Agent and the Lenders for the purposes of holding any security granted by any Obligor pursuant to the laws of the Province of Quebec and to exercise such rights and duties as are conferred upon the Hypothecary Representative thereunder and under applicable laws (with the power to delegate any such rights and duties as appropriate). The Bank of Nova Scotia, the Agent and each of the Lenders hereby confirms and agrees to such appointment and each Person who is or becomes the Agent or a Lender hereunder (including by its execution of an assignment and assumption agreement) shall be deemed to have consented to and ratified the foregoing appointment of the Hypothecary Representative and to have ratified all actions taken by the Hypothecary Representative prior to such date. For greater certainty, the Hypothecary Representative shall have the same rights, powers, immunities, indemnities and exclusions from liability as are prescribed in favour of the Agent in this Agreement, which shall apply *mutadis mutandis*. In the event of the resignation and appointment of a successor Agent (which shall include its resignation as Hypothecary Representative), such successor Agent shall also act as the Hypothecary Representative unless and until a successor hypothecary representative is otherwise appointed.

**17.17      Termination of Agreement and Loan Documents**

(a) This Agreement and the Loan Documents shall terminate and shall be of no further effect, other than with respect to indemnities expressly stated to survive termination of

this Agreement, and the Agent shall execute and deliver all discharges and termination statements requested by the Borrower (at the expense of the Borrower) upon indefeasible repayment by the Obligors of all Obligations owing to the Agent and the Lenders (other than contingent indemnification obligations in respect of which no claim has then been made and ordinary course obligations in respect of Service Agreements and charge card agreements) and the termination of the Commitments and any Hedge Arrangements.

(b) The Security shall not be discharged and released unless the Borrower has provided sufficient collateral, in the determination of the applicable Lenders, in respect of all obligations owing with respect to Service Agreements.

#### **17.18 Anti-Money Laundering Legislation**

(a) The Borrower acknowledge that, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and “know your client” laws (collectively, including any guidelines or orders thereunder, “**AML Legislation**”), the Lenders and the Agent may be required to obtain, verify and record information regarding the Borrower, the Guarantors, their directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Borrower and the Guarantors, and the transactions contemplated hereby. The Borrower shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or the Agent, or any prospective assignee or participant of a Lender or the Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

(b) The Borrower acknowledges and agrees that pursuant to the provisions of the PATRIOT Act, the Agent and any Lender may be required to obtain, verify and record information with respect to the US Obligors and the Borrower hereby agrees to cooperate with the Agent and each Lender and provide them with all information that may be required in order to fulfil their obligations under the Patriot Act. Without limiting the generality of the foregoing, the Borrower agrees to use commercially reasonable efforts to obtain the consent of any of their respective officers, directors and employees whose consent to the disclosure of any such information is required under applicable privacy legislation in Canada.

Each of the Lenders agrees that the Agent has no obligation to ascertain the identity of the Borrower or the Guarantors or any authorized signatories of the Borrower or a Guarantor on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from the Borrower or any Guarantor or any such authorized signatory in doing so.

#### **17.19 Keepwell**

(a) Each Qualified ECP Obligor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Obligor in order for such Obligor to honor its guaranty obligations under this Agreement, or other Loan Documents, in each case, in respect of Swap Obligations of an Obligor (provided, however, that each Qualified ECP Obligor shall only be liable under this Section 17.19 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 17.19, or otherwise under this Agreement or any Loan Document, as it relates to such other Obligors, voidable under

Applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount).

(b) The obligations of each Qualified ECP Obligor under this Section 17.19 shall remain in full force and effect until performance in full of all Hedge Arrangements entered into from time to time by any Obligor prior to the date on which all Obligations are paid in full to the Lenders, the Agent, and all of the Lenders' Commitments are terminated. The Qualified ECP Obligors intend that this Section 17.19 constitutes, and this Section 17.19 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Obligor for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act

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IN WITNESS WHEREOF the parties hereto have executed this Agreement.

**BORROWER:**

**Address:**

c/o TorQuest Partners  
Brookfield Place  
161 Bay St, Suite 4240  
Toronto, ON M5J 2S1

Attention: Michael Salisbury  
Facsimile: (416) 956-7001

**JORIKI INC.**

by \_\_\_\_\_

Name: Jeff McLay  
Title: Chief Financial Officer

with a copy to:

Goodmans LLP  
333 Bay Street 34th Floor  
Toronto, ON M5H 2S7

Attention: David Nadler and  
Christopher Armstrong  
Facsimile: (416) 979-1234

**Address:**

The Bank of Nova Scotia  
 Global Loan Syndication – Agency Services  
 40 Temperance Street, 6th Floor  
 Toronto, ON M5H 0B4

Attention: Head of Agency Services  
 Email:  
 agency.services@scotiabank.com

**THE BANK OF NOVA SCOTIA, as Agent**

by \_\_\_\_\_

Name:  
 Title:

\_\_\_\_\_  
 Name:  
 Title:

in the case of any Lender or the Agent,  
 with a copy to:

McMillan LLP  
 181 Bay Street, Suite 4400  
 Toronto, ON M5J 2T3

Attention: Wael Rostom  
 Facsimile: (416) 865-7048

**Address:**

The Bank of Nova Scotia  
40 King Street West  
Scotia Plaza, 13<sup>th</sup> Floor  
Toronto, ON M5W 2X6

Attention: Nick Dinkha  
Facsimile: (416) 866-6707

**THE BANK OF NOVA SCOTIA, as a Lender**

by \_\_\_\_\_

Name:  
Title:

\_\_\_\_\_  
Name:  
Title:



**Address:**

The Toronto-Dominion Bank  
66 Wellington Street West, 12<sup>th</sup> Floor  
Toronto, ON M5K1A2

Attention: Alex Boag  
Facsimile: alex.boag@td.com

**THE TORONTO-DOMINION BANK, as a Lender**

by \_\_\_\_\_

Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

**THIS IS EXHIBIT “J”  
TO THE AFFIDAVIT OF MICHAEL G. DEVON  
SWORN BEFORE ME OVER VIDEOCONFERENCE  
THIS 22<sup>nd</sup> DAY OF JANUARY, 2025**

*Madeline Cummings*

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Commissioner for Taking Affidavits



- Web Page ID: **WEnqResult**
- System Date: **17JAN2025**
- Last Modified: December 08, 2024

**Note: All pages have been returned.**

<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	JORIKI INC.								
<b>File Currency</b>	16JAN 2025								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	503278047	1	7	1	36	06MAR 2034			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
503278047		001	2		20240306 1041 1590 3487	P PPSA	10		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	JORIKI INC.								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	C/O TORQUEST PARTNERS, 161 BAY STREET,				TORONTO	ON	M5J 2S1		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	JORIKI TOPCO INC.								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	C/O TORQUEST PARTNERS, 161 BAY STREET,				TORONTO	ON	M5J 2S1		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
		X	X	X	X	X			
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>	<b>V.I.N.</b>			
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	TORYS LLP								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	79 WELLINGTON ST W, 30TH FLOOR PO BOX 27				TORONTO	ON	M5K 1N2		
<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	JORIKI INC.								
<b>File Currency</b>	16JAN 2025								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	503278047	1	7	2	36	06MAR 2034			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
503278047		002	2		20240306 1041 1590 3487				

<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>				<b>Initial</b>	<b>Surname</b>		
<b>Business Debtor</b>	<b>Business Debtor Name</b>						<b>Ontario Corporation Number</b>		
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	SUITE 4240								
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>				<b>Initial</b>	<b>Surname</b>		
<b>Business Debtor</b>	<b>Business Debtor Name</b>						<b>Ontario Corporation Number</b>		
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	SUITE 4240								
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>		
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	JORIKI INC.								
<b>File Currency</b>	16JAN 2025								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	711479853	2	7	3	36	04NOV 2025			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>		<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>	
711479853		001	7			20151104 1331 1901 4332	P PPSA	05	
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>				<b>Initial</b>	<b>Surname</b>		
<b>Business Debtor</b>	<b>Business Debtor Name</b>						<b>Ontario Corporation Number</b>		
	JORIKI INC.								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	3431 MCNICOLL AVENUE				TORONTO	ON	M1V 2V3		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>				<b>Initial</b>	<b>Surname</b>		
<b>Business Debtor</b>	<b>Business Debtor Name</b>						<b>Ontario Corporation Number</b>		
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	JPMORGAN CHASE BANK, NATIONAL ASSOCIATION								

	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
	420 W VAN BUREN ST. MAIL CODE IL1-P001					CHICAGO	IL	60606-3534	
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
					X				
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>		
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
	ALL ACCOUNTS RECEIVABLE WHICH ARISE OUT OF THE SALE OF GOODS AND SERVICES BY THE DEBTOR (REFERRED TO AS "SUPPLIER") TO THE COCA-COLA COMPANY, A DELAWARE CORPORATION AND/OR ITS SUBSIDIARIES OR AFFILIATES								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	AVS SYSTEMS INC.								
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
	201 - 1325 POLSON DR.					VERNON	BC	V1T 8H2	
<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	JORIKI INC.								
<b>File Currency</b>	16JAN 2025								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	711479853	2	7	4	36	04NOV 2025			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>		<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>	
711479853		002	7			20151104 1331 1901 4332			
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>		
<b>Business Debtor</b>	<b>Business Debtor Name</b>						<b>Ontario Corporation Number</b>		
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>		
<b>Business Debtor</b>	<b>Business Debtor Name</b>						<b>Ontario Corporation Number</b>		
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>		
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
	(INDIVIDUALLY OR COLLECTIVELY, "BUYER"), WHICH ACCOUNTS RECEIVABLE ARE NOW OR IN THE FUTURE ASSIGNED AND SOLD BY SUPPLIER TO THE INVESTORS PARTY TO THE RECEIVABLES PURCHASE AGREEMENT AMONG SUPPLIER,								
<b>Registering Agent</b>	<b>Registering Agent</b>								

	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	JORIKI INC.								
<b>File Currency</b>	16JAN 2025								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	711479853	2	7	5	36	04NOV 2025			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
711479853		003	7		20151104 1331 1901 4332				
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>		
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
	THE INVESTORS PARTY THERETO AND THE INVESTOR AGENT PARTY THERETO, AS								
	AMENDED, MODIFIED OR SUPPLEMENTED FROM TIME TO TIME (EACH, A								
	"PURCHASED RECEIVABLE"), BUT ONLY FROM AND AFTER THE DATE SUCH								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	JORIKI INC.								
<b>File Currency</b>	16JAN 2025								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	711479853	2	7	6	36	04NOV 2025			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
711479853		004	7		20151104 1331 1901 4332				
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			

	Address				City		Province		Postal Code	
Individual Debtor	Date of Birth		First Given Name			Initial		Surname		
Business Debtor	Business Debtor Name							Ontario Corporation Number		
	Address				City		Province		Postal Code	
Secured Party	Secured Party / Lien Claimant									
	Address				City		Province		Postal Code	
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date	
Motor Vehicle Description	Year	Make			Model		V.I.N.			
General Collateral Description	General Collateral Description									
	PURCHASED RECEIVABLES ARE SOLD BY SUPPLIER TO INVESTOR, AND ALL									
	ANCILLARY RIGHTS WITH RESPECT TO SUCH PURCHASED RECEIVABLES.									
	"ANCILLARY RIGHTS" SHALL MEAN, WITH RESPECT TO ANY PURCHASED									
Registering Agent	Registering Agent									
	Address				City		Province		Postal Code	
Type of Search	Business Debtor									
Search Conducted On	JORIKI INC.									
File Currency	16JAN 2025									
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status			
	711479853	2	7	7	36	04NOV 2025				
FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN										
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number		Registered Under	Registration Period		
711479853		005	7		20151104 1331 1901 4332					
Individual Debtor	Date of Birth		First Given Name			Initial		Surname		
Business Debtor	Business Debtor Name							Ontario Corporation Number		
	Address				City		Province		Postal Code	
Individual Debtor	Date of Birth		First Given Name			Initial		Surname		
Business Debtor	Business Debtor Name							Ontario Corporation Number		
	Address				City		Province		Postal Code	
Secured Party	Secured Party / Lien Claimant									
	Address				City		Province		Postal Code	
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date	

Motor Vehicle Description	Year	Make	Model		V.I.N.				
General Collateral Description	General Collateral Description								
	RECEIVABLE, ALL CONTRACT RIGHTS ARISING FROM THE SALE OF GOODS OR THE								
	RENDITION OF SERVICES WHICH GAVE RISE TO SUCH PURCHASED RECEIVABLE								
	ALL OTHER OBLIGATIONS FOR THE PAYMENT OF MONEY ARISING THEREFROM ALL								
Registering Agent	Registering Agent								
	Address				City	Province		Postal Code	
Type of Search	Business Debtor								
Search Conducted On	JORIKI INC.								
File Currency	16JAN 2025								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	711479853	2	7	8	36	04NOV 2025			
FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number		Registered Under	Registration Period	
711479853		006	7		20151104 1331 1901 4332				
Individual Debtor	Date of Birth	First Given Name			Initial		Surname		
Business Debtor	Business Debtor Name						Ontario Corporation Number		
	Address				City	Province		Postal Code	
Individual Debtor	Date of Birth	First Given Name			Initial		Surname		
Business Debtor	Business Debtor Name						Ontario Corporation Number		
	Address				City	Province		Postal Code	
Secured Party	Secured Party / Lien Claimant								
	Address				City	Province		Postal Code	
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make	Model		V.I.N.				
General Collateral Description	General Collateral Description								
	COLLATERAL, INSURANCE, SUPPORTING OBLIGATIONS, AND GUARANTIES								
	THEREFORE THE RIGHTS TO GOODS AND PROPERTY REPRESENTED THEREBY OR								
	ASSOCIATED THEREWITH ALL RIGHTS AND REMEDIES AGAINST THE BUYER AND/OR								
Registering Agent	Registering Agent								
	Address				City	Province		Postal Code	
Type of Search	Business Debtor								
Search Conducted On	JORIKI INC.								



<b>File Currency</b>	16JAN 2025								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	711479853	2	7	9	36	04NOV 2025			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
711479853		007	7		20151104 1331 1901 4332				
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>	<b>V.I.N.</b>			
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
	THIRD PARTIES OBLIGATED THEREON OR GOODS ASSOCIATED THEREWITH THE								
	BOOKS AND RECORDS WITH RESPECT THERETO AND THE PROCEEDS OF ANY OF THE								
	FOREGOING.								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	JORIKI INC.								
<b>File Currency</b>	16JAN 2025								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>				
	711479853	2	7	10	36				
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>									
	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule Attached</b>	<b>Registration Number</b>	<b>Registered Under</b>			
		001	1		20200805 1119 1901 0725				
<b>Record Referenced</b>	<b>File Number</b>	<b>Page Amended</b>	<b>No Specific Page Amended</b>	<b>Change Required</b>	<b>Renewal Years</b>	<b>Correct Period</b>			
	711479853			B RENEWAL	05				
<b>Reference Debtor/ Transferor</b>	<b>First Given Name</b>				<b>Initial</b>	<b>Surname</b>			
	<b>Business Debtor Name</b>								
	JORIKI INC.								

Other Change	Other Change									
Reason / Description	Reason / Description									
Debtor/ Transferee	Date of Birth	First Given Name			Initial		Surname			
	Business Debtor Name							Ontario Corporation Number		
	Address				City		Province	Postal Code		
Assignor Name	Assignor Name									
Secured Party	Secured party, lien claimant, assignee									
	Address				City		Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date	
Motor Vehicle Description	Year	Make			Model			V.I.N.		
General Collateral Description	General Collateral Description									
Registering Agent	Registering Agent or Secured Party/ Lien Claimant									
	ESC CORPORATE SERVICES LTD.									
	Address				City		Province	Postal Code		
	201-1325 POLSON DRIVE				VERNON		BC	V1T 8H2		
Type of Search	Business Debtor									
Search Conducted On	JORIKI INC.									
File Currency	16JAN 2025									
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status			
	755515143	3	7	11	36	17SEP 2029				
FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN										
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number		Registered Under	Registration Period		
755515143		001	1		20190917 0819 9234 8140		P PPSA	10		
Individual Debtor	Date of Birth	First Given Name			Initial		Surname			
Business Debtor	Business Debtor Name						Ontario Corporation Number			
	2713644 ONTARIO INC.									
	Address				City		Province	Postal Code		
	161 BAY STREET, SUITE 4240				TORONTO		ON	M5J 2S1		
Individual Debtor	Date of Birth	First Given Name			Initial		Surname			
Business Debtor	Business Debtor Name						Ontario Corporation Number			
	Address				City		Province	Postal Code		

<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	THE BANK OF NOVA SCOTIA, AS AGENT								
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
	40 KING ST. W. SCOTIA PLAZA, 55TH FL					TORONTO	ON	M5H 1H1	
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
		X	X	X	X	X			
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>		
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	DAVIES WARD PHILLIPS & VINEBERG LLP (PETER MARTORELLI)								
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
	155 WELLINGTON STREET WEST					TORONTO	ON	M5V 3J7	
<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	JORIKI INC.								
<b>File Currency</b>	16JAN 2025								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>		<b>of Pages</b>			
	755515143	3	7	12		36			
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>									
	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule Attached</b>		<b>Registration Number</b>		<b>Registered Under</b>	
		001	1			20191002 0959 9234 8389			
<b>Record Referenced</b>	<b>File Number</b>		<b>Page Amended</b>	<b>No Specific Page Amended</b>	<b>Change Required</b>		<b>Renewal Years</b>	<b>Correct Period</b>	
	755515143			X	A AMNDMNT				
<b>Reference Debtor/ Transferor</b>	<b>First Given Name</b>				<b>Initial</b>	<b>Surname</b>			
	<b>Business Debtor Name</b>								
	2713644 ONTARIO INC.								
<b>Other Change</b>	<b>Other Change</b>								
<b>Reason / Description</b>	<b>Reason / Description</b>								
	AMENDMENT TO REFLECT A CHANGE OF DEBTOR NAME FROM THAT LISTED ON								
	LINE 03, OF REGISTRATION NUMBER 20190917 0819 9234 8140 PURSUANT TO								
	AN AMALGAMATION DATED EFFECTIVE OCTOBER 1, 2019.								
<b>Debtor/ Transferee</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>		<b>Surname</b>	
	<b>Business Debtor Name</b>							<b>Ontario Corporation Number</b>	
	JORIKI INC.								
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
<b>Assignor Name</b>	<b>Assignor Name</b>								
<b>Secured Party</b>	<b>Secured party, lien claimant, assignee</b>								

		<b>Address</b>				<b>City</b>		<b>Province</b>	<b>Postal Code</b>
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>		
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
<b>Registering Agent</b>	<b>Registering Agent or Secured Party/ Lien Claimant</b>								
	DAVIES WARD PHILLIPS & VINEBERG LLP (PETER MARTORELLI)								
	<b>Address</b>				<b>City</b>		<b>Province</b>	<b>Postal Code</b>	
	155 WELLINGTON STREET WEST				TORONTO		ON	M5V 3J7	
<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	JORIKI INC.								
<b>File Currency</b>	16JAN 2025								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	755515251	4	7	13	36	17SEP 2029			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>		<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>	
755515251		001	1			20190917 0819 9234 8141	P PPSA	10	
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>		<b>Surname</b>	
<b>Business Debtor</b>	<b>Business Debtor Name</b>							<b>Ontario Corporation Number</b>	
	JORIKI INC.								
	<b>Address</b>				<b>City</b>		<b>Province</b>	<b>Postal Code</b>	
	3431 MCNICOLL AVENUE				TORONTO		ON	M1V 2V3	
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>		<b>Surname</b>	
<b>Business Debtor</b>	<b>Business Debtor Name</b>							<b>Ontario Corporation Number</b>	
	<b>Address</b>				<b>City</b>		<b>Province</b>	<b>Postal Code</b>	
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	THE BANK OF NOVA SCOTIA, AS AGENT								
	<b>Address</b>				<b>City</b>		<b>Province</b>	<b>Postal Code</b>	
	40 KING ST. W. SCOTIA PLAZA, 55TH FL				TORONTO		ON	M5H 1H1	
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
		X	X	X	X	X			
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>		
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
<b>Registering Agent</b>	<b>Registering Agent</b>								

	DAVIES WARD PHILLIPS & VINEBERG LLP (PETER MARTORELLI)														
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>								
	155 WELLINGTON STREET WEST				TORONTO	ON	M5V 3J7								
<b>Type of Search</b>	Business Debtor														
<b>Search Conducted On</b>	JORIKI INC.														
<b>File Currency</b>	16JAN 2025														
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>								
	790749612	5	7	14	36	14FEB 2029									
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>															
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>		<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>							
790749612		001	16			20230214 1150 1532 3480	P PPSA	6							
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>								
<b>Business Debtor</b>	<b>Business Debtor Name</b>						<b>Ontario Corporation Number</b>								
	JORIKI INC.														
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>								
	3431 MCNICOLL AVENUE				TORONTO	ON	M1V 2V3								
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>								
<b>Business Debtor</b>	<b>Business Debtor Name</b>						<b>Ontario Corporation Number</b>								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>								
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>														
	THE BANK OF NOVA SCOTIA														
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>								
	44 KING STREET WEST				TORONTO	ON	M5H 1H1								
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or No Fixed Maturity Date</b>							
			X		X	X									
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>								
	2022	CROWN			RMD6025-32		10526386								
	2022	CROWN			RMD6025-32		10526385								
<b>General Collateral Description</b>	<b>General Collateral Description</b>														
<b>Registering Agent</b>	<b>Registering Agent</b>														
	CSRS														
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>								
	4126 NORLAND AVE				BURNABY	BC	V5G 3S8								
<b>Type of Search</b>	Business Debtor														
<b>Search Conducted On</b>	JORIKI INC.														
<b>File Currency</b>	16JAN 2025														
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>								
	790749612	5	7	15	36	14FEB 2029									
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>															
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>		<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>							
790749612		002	16			20230214 1150 1532 3480									
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>								
<b>Business Debtor</b>	<b>Business Debtor Name</b>						<b>Ontario Corporation Number</b>								

	Address				City		Province		Postal Code	
Individual Debtor	Date of Birth		First Given Name			Initial		Surname		
Business Debtor	Business Debtor Name							Ontario Corporation Number		
	Address				City		Province		Postal Code	
Secured Party	Secured Party / Lien Claimant									
	Address				City		Province		Postal Code	
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date	
Motor Vehicle Description	Year	Make			Model		V.I.N.			
	2022	CROWN			165651-11F-23-1		TC3477869			
	2022	CROWN			165651-11F-23-1		TC3477868			
General Collateral Description	General Collateral Description									
Registering Agent	Registering Agent									
	Address				City		Province		Postal Code	
Type of Search	Business Debtor									
Search Conducted On	JORIKI INC.									
File Currency	16JAN 2025									
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status			
	790749612	5	7	16	36	14FEB 2029				
FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN										
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule		Registration Number		Registered Under	Registration Period	
790749612		003	16			20230214 1150 1532 3480				
Individual Debtor	Date of Birth		First Given Name			Initial		Surname		
Business Debtor	Business Debtor Name							Ontario Corporation Number		
	Address				City		Province		Postal Code	
Individual Debtor	Date of Birth		First Given Name			Initial		Surname		
Business Debtor	Business Debtor Name							Ontario Corporation Number		
	Address				City		Province		Postal Code	
Secured Party	Secured Party / Lien Claimant									
	Address				City		Province		Postal Code	
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date	

[illegible]

<b>File Currency</b>	16JAN 2025								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	790749612	5	7	18	36	14FEB 2029			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
790749612		005	16		20230214 1150 1532 3480				
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>		
	2022	CROWN			RM6025-45		10343254		
	2022	CROWN			RM6025-45		10343255		
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	JORIKI INC.								
<b>File Currency</b>	16JAN 2025								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	790749612	5	7	19	36	14FEB 2029			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
790749612		006	16		20230214 1150 1532 3480				
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			



Business Debtor	Business Debtor Name						Ontario Corporation Number		
	Address				City	Province	Postal Code		
Secured Party	Secured Party / Lien Claimant								
	Address				City	Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make			Model		V.I.N.		
	2022	CROWN			SC5725-35		10495835		
	2022	CROWN			SC5725-35		10498962		
General Collateral Description	General Collateral Description								
Registering Agent	Registering Agent								
	Address				City	Province	Postal Code		
Type of Search	Business Debtor								
Search Conducted On	JORIKI INC.								
File Currency	16JAN 2025								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	790749612	5	7	20	36	14FEB 2029			
FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule		Registration Number	Registered Under	Registration Period	
790749612		007	16			20230214 1150 1532 3480			
Individual Debtor	Date of Birth		First Given Name			Initial	Surname		
Business Debtor	Business Debtor Name						Ontario Corporation Number		
	Address				City	Province	Postal Code		
Individual Debtor	Date of Birth		First Given Name			Initial	Surname		
Business Debtor	Business Debtor Name						Ontario Corporation Number		
	Address				City	Province	Postal Code		
Secured Party	Secured Party / Lien Claimant								
	Address				City	Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make			Model		V.I.N.		
	2022	CROWN			SC5725-35		10498972		
	2022	CROWN			SC5725-35		10498970		

General Collateral Description	General Collateral Description								
Registering Agent	Registering Agent								
	Address				City	Province	Postal Code		
Type of Search	Business Debtor								
Search Conducted On	JORIKI INC.								
File Currency	16JAN 2025								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	790749612	5	7	21	36	14FEB 2029			
FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
790749612		008	16		20230214 1150 1532 3480				
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address				City	Province	Postal Code		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address				City	Province	Postal Code		
Secured Party	Secured Party / Lien Claimant								
	Address				City	Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make			Model	V.I.N.			
	2022	CROWN			SC5725-35	10498969			
	2022	CROWN			SC5725-35	10498958			
General Collateral Description	General Collateral Description								
Registering Agent	Registering Agent								
	Address				City	Province	Postal Code		
Type of Search	Business Debtor								
Search Conducted On	JORIKI INC.								
File Currency	16JAN 2025								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	790749612	5	7	22	36	14FEB 2029			
FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN									

File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
790749612		009	16		20230214 1150 1532 3480				
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address			City	Province	Postal Code			
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address			City	Province	Postal Code			
Secured Party	Secured Party / Lien Claimant								
	Address			City	Province	Postal Code			
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make			Model		V.I.N.		
	2022	CROWN			SC5725-35		10498957		
	2022	CROWN			SC5725-35		10498968		
General Collateral Description	General Collateral Description								
Registering Agent	Registering Agent								
	Address			City	Province	Postal Code			
Type of Search	Business Debtor								
Search Conducted On	JORIKI INC.								
File Currency	16JAN 2025								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	790749612	5	7	23	36	14FEB 2029			
FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
790749612		010	16		20230214 1150 1532 3480				
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address			City	Province	Postal Code			
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address			City	Province	Postal Code			

<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>									
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>	
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>			
	2022	CROWN			SC5725-35		10498966			
	2022	CROWN			SC5725-35		10498965			
<b>General Collateral Description</b>	<b>General Collateral Description</b>									
<b>Registering Agent</b>	<b>Registering Agent</b>									
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Type of Search</b>	Business Debtor									
<b>Search Conducted On</b>	JORIKI INC.									
<b>File Currency</b>	16JAN 2025									
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>			
	790749612	5	7	24	36	14FEB 2029				
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>										
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>		<b>Registered Under</b>	<b>Registration Period</b>		
790749612		011	16		20230214 1150 1532 3480					
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>		<b>Surname</b>		
<b>Business Debtor</b>	<b>Business Debtor Name</b>							<b>Ontario Corporation Number</b>		
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>		<b>Surname</b>		
<b>Business Debtor</b>	<b>Business Debtor Name</b>							<b>Ontario Corporation Number</b>		
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>									
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>	
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>			
	2022	CROWN			SC5725-35		10498964			
	2022	CROWN			SC5725-35		10498963			
<b>General Collateral Description</b>	<b>General Collateral Description</b>									

<b>Registering Agent</b>									
<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Type of Search</b>		Business Debtor							
<b>Search Conducted On</b>		JORIKI INC.							
<b>File Currency</b>		16JAN 2025							
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	790749612	5	7	25	36	14FEB 2029			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>		<b>Registration Number</b>		<b>Registered Under</b>	<b>Registration Period</b>
790749612		012	16			20230214 1150 1532 3480			
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>		<b>Surname</b>	
<b>Business Debtor</b>	<b>Business Debtor Name</b>							<b>Ontario Corporation Number</b>	
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>		<b>Surname</b>	
<b>Business Debtor</b>	<b>Business Debtor Name</b>							<b>Ontario Corporation Number</b>	
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
<b>Secured Party</b>		<b>Secured Party / Lien Claimant</b>							
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>				<b>Model</b>		<b>V.I.N.</b>	
	2022	CROWN				SC5725-35		10498961	
	2022	CROWN				SC5725-35		10498959	
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
<b>Registering Agent</b>		<b>Registering Agent</b>							
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
<b>Type of Search</b>		Business Debtor							
<b>Search Conducted On</b>		JORIKI INC.							
<b>File Currency</b>		16JAN 2025							
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	790749612	5	7	26	36	14FEB 2029			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>		<b>Registration Number</b>		<b>Registered Under</b>	<b>Registration Period</b>
790749612		013	16			20230214 1150 1532 3480			
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>		<b>Surname</b>	

<b>Business Debtor</b>	<b>Business Debtor Name</b>						<b>Ontario Corporation Number</b>		
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>		
<b>Business Debtor</b>	<b>Business Debtor Name</b>						<b>Ontario Corporation Number</b>		
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>		
	2022	CROWN			SC5725-35		10498956		
	2022	CROWN			SC5725-35		10498955		
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	JORIKI INC.								
<b>File Currency</b>	16JAN 2025								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	790749612	5	7	27	36	14FEB 2029			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>		<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>	
790749612		014	16			20230214 1150 1532 3480			
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>		
<b>Business Debtor</b>	<b>Business Debtor Name</b>						<b>Ontario Corporation Number</b>		
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>		
<b>Business Debtor</b>	<b>Business Debtor Name</b>						<b>Ontario Corporation Number</b>		
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		

<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>	<b>Model</b>			<b>V.I.N.</b>			
	2022	CROWN	SC5725-35			10498954			
	2022	CROWN	SC5725-35			10498953			
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	JORIKI INC.								
<b>File Currency</b>	16JAN 2025								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	790749612	5	7	28	36	14FEB 2029			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>		<b>Registered Under</b>	<b>Registration Period</b>	
790749612		015	16		20230214 1150 1532 3480				
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>		
<b>Business Debtor</b>	<b>Business Debtor Name</b>						<b>Ontario Corporation Number</b>		
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>		
<b>Business Debtor</b>	<b>Business Debtor Name</b>						<b>Ontario Corporation Number</b>		
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>	<b>Model</b>			<b>V.I.N.</b>			
	2022	CROWN	SC5725-35			10498967			
	2022	CROWN	SC5725-35			10498952			
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	

<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	JORIKI INC.								
<b>File Currency</b>	16JAN 2025								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	790749612	5	7	29	36	14FEB 2029			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
790749612		016	16		20230214 1150 1532 3480				
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>	<b>V.I.N.</b>			
	2022	CROWN			SC5725-35	10498960			
	2022	CROWN			SC5725-35	10498971			
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	JORIKI INC.								
<b>File Currency</b>	16JAN 2025								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>				
	790749612	5	7	30	36				
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>									
	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule Attached</b>	<b>Registration Number</b>	<b>Registered Under</b>			
		01	001		20230214 1935 1531 8163				
<b>Record Referenced</b>	<b>File Number</b>	<b>Page Amended</b>	<b>No Specific Page Amended</b>	<b>Change Required</b>	<b>Renewal Years</b>	<b>Correct Period</b>			
	790749612		X	A AMNDMNT					
<b>Reference Debtor/ Transferor</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>				



	<b>Business Debtor Name</b>									
	JORIKI INC.									
<b>Other Change</b>	<b>Other Change</b>									
<b>Reason / Description</b>	<b>Reason / Description</b>									
	AMEND COLLATERAL CLASSIFICATION TO READ-									
	INVENTORY, EQUIPMENT, ACCOUNTS, OTHER & VEHICLE INCLUDED.									
<b>Debtor/ Transferee</b>	<b>Date of Birth</b>	<b>First Given Name</b>				<b>Initial</b>	<b>Surname</b>			
	<b>Business Debtor Name</b>								<b>Ontario Corporation Number</b>	
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Assignor Name</b>	<b>Assignor Name</b>									
<b>Secured Party</b>	<b>Secured party, lien claimant, assignee</b>									
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>	
		X	X	X	X	X				
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>				<b>Model</b>		<b>V.I.N.</b>		
<b>General Collateral Description</b>	<b>General Collateral Description</b>									
<b>Registering Agent</b>	<b>Registering Agent or Secured Party/ Lien Claimant</b>									
	D+H LIMITED PARTNERSHIP									
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	SUITE 200, 4126 NORLAND AVENUE					BURNABY	BC	V5G 3S8		
<b>Type of Search</b>	Business Debtor									
<b>Search Conducted On</b>	JORIKI INC.									
<b>File Currency</b>	16JAN 2025									
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>		<b>of Pages</b>				
	790749612	5	7	31		36				
<b>FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT</b>										
	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule Attached</b>		<b>Registration Number</b>			<b>Registered Under</b>	
		001	2	X		20230613 1049 4085 8595				
<b>Record Referenced</b>	<b>File Number</b>	<b>Page Amended</b>		<b>No Specific Page Amended</b>	<b>Change Required</b>		<b>Renewal Years</b>	<b>Correct Period</b>		
	790749612				A AMNDMNT					
<b>Reference Debtor/ Transferor</b>	<b>First Given Name</b>				<b>Initial</b>	<b>Surname</b>				
	<b>Business Debtor Name</b>									
	JORIKI INC.									
<b>Other Change</b>	<b>Other Change</b>									

<b>Reason / Description</b>	<b>Reason / Description</b>									
	ADDED FORKLIFTS AND BATTERIES.									
<b>Debtor/ Transferee</b>	<b>Date of Birth</b>	<b>First Given Name</b>				<b>Initial</b>	<b>Surname</b>			
	<b>Business Debtor Name</b>							<b>Ontario Corporation Number</b>		
	<b>Address</b>					<b>City</b>		<b>Province</b>	<b>Postal Code</b>	
<b>Assignor Name</b>	<b>Assignor Name</b>									
<b>Secured Party</b>	<b>Secured party, lien claimant, assignee</b>									
	<b>Address</b>					<b>City</b>		<b>Province</b>	<b>Postal Code</b>	
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>	
		X	X	X	X	X				
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>				<b>Model</b>		<b>V.I.N.</b>		
	2023	CROWN				RM6025-45		10554230		
	2023	CROWN				RM6025-45		10554229		
<b>General Collateral Description</b>	<b>General Collateral Description</b>									
<b>Registering Agent</b>	<b>Registering Agent or Secured Party/ Lien Claimant</b>									
	D + H LIMITED PARTNERSHIP									
	<b>Address</b>					<b>City</b>		<b>Province</b>	<b>Postal Code</b>	
	2 ROBERT SPECK PARKWAY, 15TH FLOOR					MISSISSAUGA		ON	L4Z 1H8	
<b>Type of Search</b>	Business Debtor									
<b>Search Conducted On</b>	JORIKI INC.									
<b>File Currency</b>	16JAN 2025									
	<b>File Number</b>			<b>Family</b>			<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	
	790749612			5			7	32	36	
<b>FORM 4C Motor Vehicle Schedule</b>										
<b>Reference File Number</b>		<b>Page of</b>	<b>Total Pages</b>		<b>Registration Number</b>					
790749612		002	2		20230613 1049 4085 8595					
<b>Year</b>	<b>Make</b>		<b>Model</b>			<b>VIN Number</b>				
2023	CROWN		RM6025-45			10554032				
2023	CROWN		RM6025-45			10554031				
2022	CROWN		FS4-MP344-4			4M22090383				
2023	CROWN		FS4-MP344-4			4M22090177				
2023	CROWN		FS4-MP344-4			4M22090178				
2023	CROWN		FS4-MP344-4			4M22090182				

<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	JORIKI INC.								
<b>File Currency</b>	16JAN 2025								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	791454933	6	7	33	36	14MAR 2029			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
791454933		01	003		20230314 1003 1462 7112	P PPSA	6		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	JORIKI INC.								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	695 DERWENT WAY				DELTA	BC	V3M5P7		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	JORIKI INC.								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	3431 MCNICOLL AVE				SCARBOROUGH	ON	M1V2V3		
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	TOYOTA INDUSTRIES COMMERCIAL FINANCE CANADA, INC.								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	630 - 401 THE WEST MALL				TORONTO	ON	M9C5J5		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
			X						
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>	<b>V.I.N.</b>			
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
	MATERIAL HANDLING EQUIPMENT TOGETHER WITH ALL PARTS, ATTACHMENTS, ACCESSORIES, ADDITIONS, BATTERIES, CHARGERS, REPAIR PARTS, AND OTHER EQUIPMENT PLACED ON OR FORMING PART OF THE GOODS DESCRIBED HEREIN								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	PPSA CANADA INC. - (8154)								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	110 SHEPPARD AVE EAST, SUITE 303				TORONTO	ON	M2N6Y8		
<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	JORIKI INC.								
<b>File Currency</b>	16JAN 2025								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	791454933	6	7	34	36	14MAR 2029			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
791454933		02	003		20230314 1003 1462 7112	P PPSA	6		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		

<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>				<b>Initial</b>	<b>Surname</b>		
<b>Business Debtor</b>	<b>Business Debtor Name</b>						<b>Ontario Corporation Number</b>		
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>		
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
	WITH ANY PROCEEDS THEREOF AND THEREFROM INCLUDING, WITHOUT								
	LIMITATION, ALL GOODS, SECURITIES, INSTRUMENTS, DOCUMENTS OF TITLE,								
	CHATTEL PAPER AND INTANGIBLES (AS DEFINED IN THE PERSONAL PROPERTY								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	PPSA CANADA INC. - (8154)								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	110 SHEPPARD AVE EAST, SUITE 303				TORONTO	ON	M2N6Y8		
<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	JORIKI INC.								
<b>File Currency</b>	16JAN 2025								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	791454933	6	7	35	36	14MAR 2029			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>		<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>	
791454933		03	003			20230314 1003 1462 7112	P PPSA	6	
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>				<b>Initial</b>	<b>Surname</b>		
<b>Business Debtor</b>	<b>Business Debtor Name</b>						<b>Ontario Corporation Number</b>		
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>				<b>Initial</b>	<b>Surname</b>		
<b>Business Debtor</b>	<b>Business Debtor Name</b>						<b>Ontario Corporation Number</b>		
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>

Motor Vehicle Description	Year	Make	Model		V.I.N.				
General Collateral Description	General Collateral Description								
	SECURITY ACT)								
Registering Agent	Registering Agent								
	PPSA CANADA INC. - (8154)								
	Address			City	Province	Postal Code			
	110 SHEPPARD AVE EAST, SUITE 303			TORONTO	ON	M2N6Y8			
Type of Search	Business Debtor								
Search Conducted On	JORIKI INC.								
File Currency	16JAN 2025								
	File Number	Family	of Families	Page	of Pages	Expiry Date			
	796969881	7	7	36	36	07SEP 2033			
FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
796969881		001	1		20230907 1638 9234 0034	P PPSA	10		
Individual Debtor	Date of Birth	First Given Name		Initial	Surname				
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	JORIKI INC.								
	Address			City	Province	Postal Code			
	3431 MCNICOLL AVENUE			TORONTO	ON	M1V 2V3			
Individual Debtor	Date of Birth	First Given Name		Initial	Surname				
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address			City	Province	Postal Code			
Secured Party	Secured Party / Lien Claimant								
	ROYNAT CAPITAL INC., AS AGENT								
	Address			City	Province	Postal Code			
	625 COCHRANE DR., SUITE #200			MARKHAM	ON	L3R 9R9			
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
		X	X	X	X	X			
Motor Vehicle Description	Year	Make	Model		V.I.N.				
General Collateral Description	General Collateral Description								
Registering Agent	Registering Agent								
	DAVIES WARD PHILLIPS & VINEBERG LLP (LUIGI RULLI)								
	Address			City	Province	Postal Code			
	155 WELLINGTON STREET WEST			TORONTO	ON	M5V 3J7			

LAST PAGE

Note: All pages have been returned.

**THIS IS EXHIBIT "K"**  
**TO THE AFFIDAVIT OF MICHAEL G. DEVON**  
**SWORN BEFORE ME OVER VIDEOCONFERENCE**  
**THIS 22<sup>nd</sup> DAY OF JANUARY, 2025**

*Madeline Cummings*

---

Commissioner for Taking Affidavits

## Business Debtor - "JORIKI INC."

**Search Date and Time:** January 17, 2025 at 8:13:23 am Pacific time  
**Account Name:** Not available.  
**Folio Number:** 38311952

### TABLE OF CONTENTS

6 Matches in 5 Registrations in Report

Exact Matches: 6 (\*)

Total Search Report Pages: 12

	Base Registration	Base Registration Date	Debtor Name	Page
1	<a href="#">769358L</a>	September 17, 2019	* JORIKI INC.	<a href="#">2</a>
2	<a href="#">266435P</a>	December 22, 2022	* JORIKI INC. * JORIKI INC.	<a href="#">4</a>
3	<a href="#">432540P</a>	March 24, 2023	* JORIKI INC.	<a href="#">7</a>
4	<a href="#">775528P</a>	September 7, 2023	* JORIKI INC.	<a href="#">9</a>
5	<a href="#">423043Q</a>	June 4, 2024	* JORIKI INC.	<a href="#">11</a>

## Base Registration Number: 769358L

<b>Registration Description:</b>	PPSA SECURITY AGREEMENT
<b>Act:</b>	PERSONAL PROPERTY SECURITY ACT
<b>Base Registration Date and Time:</b>	September 17, 2019 at 7:08:21 am Pacific time
<b>Current Expiry Date and Time:</b>	September 17, 2029 at 11:59:59 pm Pacific time Expiry date includes subsequent registered renewal(s)
<b>Trust Indenture:</b>	No

## CURRENT REGISTRATION INFORMATION

(as of January 17, 2025 at 8:13:23 am Pacific time)

### Secured Party Information

**THE BANK OF NOVA SCOTIA, AS  
AGENT**

**Address**

40 KING ST W 55TH FL  
TORONTO ON  
M5H 1H1 Canada

### Debtor Information

**JORIKI INC.**

**Address**

3431 MCNICOLL AVENUE  
TORONTO ON  
M1V 2V3 Canada

### Vehicle Collateral

None

### General Collateral

**Base Registration General Collateral:**

ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTOR. THE COMPLETE ADDRESS OF THE SECURED PARTY IS 40 KING STREET WEST, SCOTIA PLAZA, 55TH FLOOR, TORONTO, ON M5H 1H1.



### Original Registering Party

**DAVIES WARD PHILLIPS &  
VINEBERG LLP (PETER  
MARTORELLI)**

### Address

155 WELLINGTON STREET WEST  
TORONTO ON  
M5V 3J7 Canada



## Base Registration Number: 266435P

<b>Registration Description:</b>	PPSA SECURITY AGREEMENT
<b>Act:</b>	PERSONAL PROPERTY SECURITY ACT
<b>Base Registration Date and Time:</b>	December 22, 2022 at 9:07:38 am Pacific time
<b>Current Expiry Date and Time:</b>	December 22, 2028 at 11:59:59 pm Pacific time Expiry date includes subsequent registered renewal(s)
<b>Trust Indenture:</b>	No

## CURRENT REGISTRATION INFORMATION

(as of January 17, 2025 at 8:13:23 am Pacific time)

### Secured Party Information

**TOYOTA INDUSTRIES COMMERCIAL  
FINANCE CANADA, INC.**

#### Address

630 - 401 THE WEST MALL  
TORONTO ON  
M9C 5J5 Canada

### Debtor Information

**JORIKI INC.**

#### Address

695 DERWENT WAY  
DELTA BC  
V3M 5P7 Canada

**JORIKI INC.**

#### Address

3431 MCNICOLL AVE.  
SCARBOROUGH ON  
M1V 2V3 Canada

### Vehicle Collateral

Type	Year	Make/Model	Serial/VIN/DOT Number
Motor Vehicle (MV)	2022	TOYOTA / 8FBE18U	25498

---

## General Collateral

### Base Registration General Collateral:

MATERIAL HANDLING EQUIPMENT TOGETHER WITH ALL PARTS, ATTACHMENTS, ACCESSORIES, ADDITIONS, BATTERIES, CHARGERS, REPAIR PARTS, AND OTHER EQUIPMENT PLACED ON OR FORMING PART OF THE GOODS DESCRIBED HEREIN WITH ANY PROCEEDS THEREOF AND THEREFROM INCLUDING, WITHOUT LIMITATION, ALL GOODS, SECURITIES, INSTRUMENTS, DOCUMENTS OF TITLE, CHATTEL PAPER AND INTANGIBLES (AS DEFINED IN THE PERSONAL PROPERTY SECURITY ACT)

---

## Original Registering Party

**PPSA CANADA INC. - (8154)**

### Address

110 SHEPPARD AVE EAST, SUITE 303  
TORONTO ON  
M2N 6Y8 Canada



## HISTORY

(Showing most recent first)

### AMENDMENT

**Registration Date and Time:** March 14, 2023 at 6:55:25 am Pacific time  
**Registration Number:** 410434P  
**Description:**

### Debtor Information

**JORIKI INC.**

ADDED

#### Address

3431 MCNICOLL AVE.  
SCARBOROUGH ON  
M1V 2V3 Canada

### Registering Party Information

**PPSACANADA.COM**

#### Address

1136 CENTRE STREET, SUITE 185  
THORNHILL ON  
L4J 3M8 Canada

## Base Registration Number: 432540P

<b>Registration Description:</b>	PPSA SECURITY AGREEMENT
<b>Act:</b>	PERSONAL PROPERTY SECURITY ACT
<b>Base Registration Date and Time:</b>	March 24, 2023 at 8:17:37 am Pacific time
<b>Current Expiry Date and Time:</b>	March 24, 2027 at 11:59:59 pm Pacific time Expiry date includes subsequent registered renewal(s)
<b>Trust Indenture:</b>	No

## CURRENT REGISTRATION INFORMATION

(as of January 17, 2025 at 8:13:23 am Pacific time)

### Secured Party Information

**MASONLIFT LTD.**

**Address**

1605 CLIVEDEN AVENUE  
DELTA BC  
V3M 6P7 Canada

### Debtor Information

**JORIKI INC.**

**Address**

695 DERWENT WAY  
DELTA BC  
V3M 5P7 Canada

### Vehicle Collateral

Type	Year	Make/Model	Serial/VIN/DOT Number
Motor Vehicle (MV)		Toyota / 8FBE18U	8FBE18U-25498

### General Collateral

None.

---

## Original Registering Party

**MASONLIFT LTD.**

### Address

1605 CLIVEDEN AVENUE  
DELTA BC  
V3M 6P7 Canada



## Base Registration Number: 775528P

<b>Registration Description:</b>	PPSA SECURITY AGREEMENT
<b>Act:</b>	PERSONAL PROPERTY SECURITY ACT
<b>Base Registration Date and Time:</b>	September 7, 2023 at 5:05:08 pm Pacific time
<b>Current Expiry Date and Time:</b>	September 7, 2029 at 11:59:59 pm Pacific time Expiry date includes subsequent registered renewal(s)
<b>Trust Indenture:</b>	No

## CURRENT REGISTRATION INFORMATION

(as of January 17, 2025 at 8:13:23 am Pacific time)

### Secured Party Information

#### ROYNAT CAPITAL INC.

#### Address

625 COCHRANE DR., SUITE #200  
MARKHAM ON  
L3R 9R9 Canada

#### ROYNAT CAPITAL INC., AS AGENT

#### Address

625 COCHRANE DR., SUITE #200  
MARKHAM ON  
L3R 9R9 Canada

### Debtor Information

#### JORIKI INC.

#### Address

3431 MCNICOLL AVENUE  
TORONTO ON  
M1V 2V3 Canada

### Vehicle Collateral

None



---

## General Collateral

Base Registration General Collateral:

ALL OF THE DEBTOR'S PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY.

---

## Original Registering Party

**LAWSON LUNDELL**

**Address**

925 WEST GEORGIA STREET  
SUITE 1600  
VANCOUVER BC  
V6C 3L2 Canada





## Base Registration Number: 423043Q

<b>Registration Description:</b>	PPSA SECURITY AGREEMENT
<b>Act:</b>	PERSONAL PROPERTY SECURITY ACT
<b>Base Registration Date and Time:</b>	June 4, 2024 at 11:47:51 am Pacific time
<b>Current Expiry Date and Time:</b>	June 4, 2025 at 11:59:59 pm Pacific time Expiry date includes subsequent registered renewal(s)
<b>Trust Indenture:</b>	No

## CURRENT REGISTRATION INFORMATION

(as of January 17, 2025 at 8:13:23 am Pacific time)

### Secured Party Information

MASONLIFT LTD.

#### Address

1605 CLIVEDEN AVENUE  
DELTA BC  
V3M 6P7 Canada

### Debtor Information

JORIKI INC.

#### Address

695 DERWENT WAY  
DELTA BC  
V3M 5P7 Canada

### Vehicle Collateral

Type	Year	Make/Model	Serial/VIN/DOT Number
Motor Vehicle (MV)		TOYOTA / 9BDRU15	9BDRU15-38349

### General Collateral

None.

---

### Original Registering Party

**MASONLIFT LTD.**

#### Address

1605 CLIVEDEN AVENUE  
DELTA BC  
V3M 6P7 Canada



**THIS IS EXHIBIT “L”  
TO THE AFFIDAVIT OF MICHAEL G. DEVON  
SWORN BEFORE ME OVER VIDEOCONFERENCE  
THIS 22<sup>nd</sup> DAY OF JANUARY, 2025**

*Madeline Cummings*

---

Commissioner for Taking Affidavits



- Web Page ID: **WEnqResult**
- System Date: **17JAN2025**
- Last Modified: December 08, 2024

**Note: All pages have been returned.**

<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	JORIKI TOPCO INC.								
<b>File Currency</b>	16JAN 2025								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	755515008	1	2	1	2	17SEP 2029			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
755515008		001	1		20190917 0818 9234 8139	P PPSA	10		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	JORIKI TOPCO INC.								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	161 BAY STREET, SUITE 4240				TORONTO	ON	M5J 2S1		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	THE BANK OF NOVA SCOTIA, AS AGENT								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	40 KING ST. W. SCOTIA PLAZA, 55TH FL				TORONTO	ON	M5H 1H1		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
				X	X				
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>	<b>V.I.N.</b>			
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	DAVIES WARD PHILLIPS & VINEBERG LLP (PETER MARTORELLI)								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	155 WELLINGTON STREET WEST				TORONTO	ON	M5V 3J7		
<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	JORIKI TOPCO INC.								
<b>File Currency</b>	16JAN 2025								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	796969872	2	2	2	2	07SEP 2033			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
796969872		001	1		20230907 1637 9234 0033	P PPSA	10		

<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>	<b>Initial</b>	<b>Surname</b>					
<b>Business Debtor</b>	<b>Business Debtor Name</b>			<b>Ontario Corporation Number</b>					
	JORIKI TOPCO INC.								
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>					
	161 BAY STREET, SUITE 4240	TORONTO	ON	M5J 2S1					
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>	<b>Initial</b>	<b>Surname</b>					
<b>Business Debtor</b>	<b>Business Debtor Name</b>			<b>Ontario Corporation Number</b>					
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>					
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	ROYNAT CAPITAL INC., AS AGENT								
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>					
	625 COCHRANE DR., SUITE #200	MARKHAM	ON	L3R 9R9					
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
				X	X				
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>	<b>Model</b>		<b>V.I.N.</b>				
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	DAVIES WARD PHILLIPS & VINEBERG LLP (LUIGI RULLI)								
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>					
	155 WELLINGTON STREET WEST	TORONTO	ON	M5V 3J7					

LAST PAGE

Note: All pages have been returned.

**THIS IS EXHIBIT "M"**  
**TO THE AFFIDAVIT OF MICHAEL G. DEVON**  
**SWORN BEFORE ME OVER VIDEOCONFERENCE**  
**THIS 22<sup>nd</sup> DAY OF JANUARY, 2025**

*Madeline Cummings*  
\_\_\_\_\_  
Commissioner for Taking Affidavits

**AMENDED AND RESTATED SUBORDINATE CREDIT AGREEMENT**

**BETWEEN**

**JORIKI INC.  
as Borrower**

**AND**

**ROYNAT CAPITAL INC.  
as Administrative Agent**

**AND**

**THE FINANCIAL INSTITUTIONS  
from time to time parties hereto,  
as Lenders**

**MADE AS OF  
March 11, 2024**

**DAVIES WARD PHILLIPS & VINEBERG LLP**

**TORYS LLP**

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#### THE CREDIT FACILITY

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## **AMENDED AND RESTATED SUBORDINATE CREDIT AGREEMENT**

THIS AGREEMENT is made as of March 11, 2024.

B E T W E E N:

**JORIKI INC.**, a corporation existing under the laws of Ontario

(hereinafter referred to as the “**Borrower**”)

- and -

**ROYNAT CAPITAL INC.**, in its capacity as agent

(hereinafter referred to as the “**Agent**”)

- and -

**EACH FINANCIAL INSTITUTION** from time to time party to this agreement and shown as a lender on the signature pages hereto

(hereinafter in such capacities individually referred to as a “**Lender**” and collectively in such capacities referred to as the “**Lenders**”)

WHEREAS the Borrower, the Agent and the Lenders identified therein are parties to a subordinate credit agreement dated as of September 8, 2023 (the “**Original Credit Agreement**”);

AND WHEREAS the parties hereto wish to amend and restate the Original Credit Agreement in accordance with the terms hereof;

AND WHEREAS Roynat Capital Inc. will continue to be the Agent as contemplated by Section 14.1;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the covenants and agreements herein contained the parties hereto agree as follows:

### **ARTICLE 1**

#### **INTERPRETATION**

##### **1.1        Definitions**

In this Agreement unless something in the subject matter or context is inconsistent therewith:

**“Acquisition”** shall mean, with respect to any Person, any purchase or other acquisition, regardless of how accomplished or effected (including any such purchase or other acquisition effected by way of amalgamation, merger, arrangement, business combination or other form of corporate reorganization or by way of purchase, lease or other acquisition arrangements), of (a) any other Person (including any purchase or acquisition of such number of the issued and outstanding securities of, or such portion of an Equity Interest in, such other Person) such that such other Person becomes a Subsidiary of the purchaser or of any of its Affiliates, (b) all or substantially all of the Property of any other Person, or (c) all or any material portion of all of any division, business, or operation or undertaking of any other Person as a going concern.

**“Administrative Questionnaire”** means an administrative questionnaire in a form supplied by the Agent.

**“Affiliate”** means, with respect to a specified Person, another Person that directly or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

**“Agent”** means Roynat in its capacity as administrative agent for the Lenders, including any successor agent pursuant to Section 14.7.

**“Agent’s Wire Details”** means the details for wire transfer payments to the Agent provided to the Borrower on or prior to the Closing Date, or such other wire transfer details that the Agent may from time to time provide by notice to the Borrower and the Lenders.

**“Agreement”** means this amended and restated subordinate credit agreement, the schedules and all amendments made hereto in accordance with the provisions hereof, as amended, revised, replaced, supplemented or restated from time to time.

**“Annual Business Plan”** means the annual business plan of the Borrower, prepared on a consolidated basis, with detailed financial projections and budgets on a month to month basis for the following Fiscal Year, in each case consisting of a balance sheet, statement of income, statement of cash flows and proposed Capital Expenditures which shall include management discussions and analysis.

**“Anti-Corruption Laws”** has the meaning set forth in Section 9.1(ii).

**“Anti-Terrorism Law”** means any Applicable Laws relating to terrorism or terrorism financing, including Executive Order No. 13224, the laws administered by the OFAC, the *Criminal Code* (Canada), the *United Nations Act* (Canada) and the *Special Economic Measures Act* (Canada).

**“Applicable Law”** means (a) any domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, rule, regulation, restriction or by-law (zoning or otherwise); (b) any judgment, order, writ, injunction, decision, ruling, decree or award; (c) any regulatory policy, practice, request, guideline or directive; or (d) any franchise, licence, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Governmental Authority, binding on or affecting the Person referred to in the context in which the term is used or binding on or affecting the property of such Person, in each case having the force of law.

**“Applicable Order”** means any applicable domestic or foreign order, judgment, award or decree made by any court or Governmental Authority.

**“Arm’s Length”** has the meaning specified in the definition of **“Non-Arm’s Length”**.

**“Assignment and Assumption”** means an assignment and assumption entered into by a Lender and an Eligible Assignee and accepted by the Agent, in substantially the form of Schedule F or any other form approved by the Agent.

**“Auditor”** means the Borrower’s auditor, being one of PricewaterhouseCoopers LLP, Ernst & Young LLP, Deloitte & Touche LLP, or KPMG LLP, and includes its successors and any replacement auditor from time to time.

**“Basel III”** means (i) the agreements on capital requirements, leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated; and (ii) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”.

**“BHC Act Affiliate”** of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

**“BNS”** means The Bank of Nova Scotia.

**“Borrower”** means Joriki Inc., an Ontario corporation, including its successors and assigns.

**“Borrower’s Counsel”** means the firm of Torys LLP or such other firm or firms of legal counsel as the Borrower may from time to time designate.

**“Business”** means the business of manufacturing and packaging juices, other beverages and food products on behalf of several major brands and retailers across North America.

**“Business Day”** means any day other than a Saturday or a Sunday on which banks generally are open for business in Toronto, Ontario and Vancouver, British Columbia.

**“Contract”** means the contract to be entered into between one or more of the Obligors and [REDACTED] (or its affiliate).

**“Canadian Dollars”, “Cdn. Dollars”, “Cdn.\$” and “\$”** means the lawful money of Canada.

**“Canadian EBITDA”** means EBITDA as calculated for the Canadian operations of the Borrower only, which for certainty would exclude any financial impact of the US Facility.

**“Canadian Pension Plan”** means any “pension plan” that is subject to the funding requirements of the *Pension Benefits Act* (Ontario) or applicable pension benefits

legislation in any other Canadian jurisdiction and is applicable to employees resident in Canada of an Obligor.

**“Canadian Welfare Plan”** means any medical, health, hospitalization, insurance or other employee benefit or welfare plan or arrangement applicable to employees resident in Canada of an Obligor.

**“Capital Expenditures”** means, for any period, any expenditure made by any Person for the purchase, lease, license, acquisition, erection, development, improvement or construction of capital assets, including any such expenditure financed by way of a Capital Lease or any other expenditure required to be capitalized, all as determined on a consolidated basis in accordance with GAAP.

**“Capital Lease”** means, with respect to any Person, any lease of (or other agreement conveying the right to use) any real or personal property by such Person that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

**“Cash Equivalents”** means (i) short-term obligations of, or fully guaranteed by, the government of the United States of America or Canada, (ii) short-term obligations of, or fully guaranteed by, the government of a State of the United States of America or of a Province of Canada, in each case having a rating of “A-” (or the then equivalent grade) or better by a nationally recognized rating agency, (iii) commercial paper having a rating of “A-” (or then equivalent grade) or better by S&P or Moody’s, (iv) demand or current deposit accounts maintained in the ordinary course of business with the Agent or any Lender or any Affiliate thereof, (v) certificates of deposit issued by and time deposits with any Schedule I Canadian chartered bank or any other commercial bank or trust company (whether domestic or foreign) having capital and surplus in excess of \$500,000,000 and a senior unsecured rating of “A-” or better by S&P or Moody’s, (vi) money market funds that invest substantially all of their assets in any of the foregoing; provided in each case that the same has a term not exceeding (A) one year in the case of (i) and (ii) above, and (B) three-hundred and sixty-five (365) days in the case of (iii) through (vi) above.

**“██████”** means ████████ North America.

**“██████ Contract”** means the contract dated as of July 7, 2021 between the Borrower and ████████.

**“██████ PET Line #1”** means the line identified as such in Exhibit I.

**“██████ Carton Line #4”** means the line identified as such in Exhibit I.

**“CERCLA”** means the *Comprehensive Environmental Response, Compensation and Liability Act of 1980*, as amended by the *Superfund Amendments and Reauthorization Act of 1986*, 42 U.S.C. §§9601 et seq., and any future amendment.

**“Change in Law”** means the occurrence, after the date of this Agreement, of any of the following: (a) the phase-in, adoption or taking effect of any Applicable Law, (b) any change in any Applicable Law or in the administration, interpretation or application



thereof by any Governmental Authority or (c) the making or issuance of any Applicable Law by any Governmental Authority.

**“Change of Control”** means either (a) the failure of TorQuest and its Affiliates to collectively have the right to nominate or appoint a majority of the directors to the board of directors of the Borrower, or (b) the failure of TorQuest and its Affiliates to legally and beneficially own directly or indirectly, no less than 50.1% of the economic interest of the Borrower at any time.

**“Closing Date”** means September 8, 2023.

**“Commitment”** means, in respect of each Lender from time to time, the maximum amount of the Credit Facility which such Lender has covenanted to make as set forth in Schedule A to this Agreement, which for greater certainty shall in each case be reduced by such Lender’s Proportionate Share of the amount of any permanent repayments, reductions or prepayments made hereunder.

**“Commodity Exchange Act”** means the *Commodity Exchange Act* (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

**“Compliance Certificate”** means the certificate required pursuant to Section 10.3(e), substantially in the form annexed as Schedule D and signed by a senior officer of the Borrower.

**“Contingent Obligation”** means, as to any Person, any obligation, whether secured or unsecured, of such Person guaranteeing or indemnifying, or in effect guaranteeing or indemnifying, any Debt (the **“primary obligations”**) of any other Person (the **“primary obligor”**) in any manner, whether directly or indirectly, including any obligation of such Person as an account party in respect of a letter of credit or letter of guarantee issued to assure payment by the primary obligor of any such primary obligation and any obligations of such Person, whether or not contingent, (a) to purchase any such primary obligation or any Property constituting direct or indirect security therefor, (b) to advance or supply funds for the purchase or payment of any such primary obligation or to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase Property, securities or services primarily for the purpose of assuring the obligee under any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (d) otherwise to assure or hold harmless the obligee under such primary obligation against loss in respect of such primary obligation; provided, however, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business and customary indemnities provided in agreements executed and delivered in respect of Acquisitions or Dispositions.

**“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have corresponding meanings.

**“Controlled Group”** in respect of any Obligor operating in the United States, means all members of a controlled group of corporations and all trades or businesses (whether or

not incorporated) under common control which, together with such Obligor or any of its Subsidiaries, are treated as a single employer under Section 414 of the IRC.

**“Covered Entity”** means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

**“Credit Facility”** means a \$15,000,000 non-revolving loan to be made available to the Borrower on the Closing Date, as such amount may increase with the capitalization of interest.

**“Debt”** means, with respect to any Person, without duplication, the aggregate of the following amounts, at the date of determination:

- (a) all indebtedness of such Person to any other Person for borrowed money;
- (b) all obligations of such Person for the deferred purchase price of Property or services which constitute indebtedness;
- (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments;
- (d) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person (whether or not the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such Property);
- (e) all obligations of such Person as lessee under leases that have been, in accordance with GAAP, recorded as Capital Leases;
- (f) all reimbursement obligations, contingent or otherwise, of such Person under bankers' acceptance, letter of credit and similar facilities;
- (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any partnership or shareholder or other Equity Interests of such Person (for greater certainty, not including obligations with respect to unexercised options and rights of first refusal and where conditions precedent to the obligations have not occurred);
- (h) all Contingent Obligations of such Person (other than, for certainty, the Obligor guarantees and other Security);
- (i) all Earn Out Obligations that have become due but have not yet been paid;
- (j) all obligations of such Person under any Hedge Arrangements; and

- (k) any other obligation arising under arrangements or agreements including without limitation off-balance sheet financing that, in substance, provide debt financing to such Person.

For greater certainty, “Debt” shall exclude trade payables, customer deposits and accrued liabilities arising in the ordinary course of business.

“**Default**” means any event or condition that constitutes an Event of Default or that would constitute an Event of Default except for satisfaction of any condition subsequent required to make the event or condition an Event of Default, including giving of any notice, passage of time, or both.

“**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“**Depreciation Expense**” means, for any period with respect to any Person, depreciation, amortization, depletion and other like reductions to income of such Person for such period not involving any outlay of cash, determined without duplication and on a consolidated basis in accordance with GAAP.

“**Disposition**” means any sale, assignment, transfer, conveyance, lease or other disposition of any asset of any Obligor in a single transaction or a series of related transactions and the words “**Dispose**” and “**Disposed**” shall have correlative meanings. For certainty, (i) the purchase and sale of Cash Equivalents and (ii) the conversion of cash from one currency to another currency do not constitute Dispositions.

“**Distribution**” shall mean, with respect to any Person, any payment, directly or indirectly, by such Person: (a) of any dividends on any Equity Interests, other than dividends or distributions payable in units, shares or other Equity Interests; (b) on account of, or for the purpose of setting apart any property for a sinking or other analogous fund for, the purchase, redemption, retirement or other acquisition of any Equity Interests of such Person; (c) of any other distribution (other than distributions in units, shares or other Equity Interests) in respect of any Equity Interests of such Person; (d) of any management, consulting or similar fee or compensation (of any nature or kind including for certainty the Shareholder Backstop Fee) or any bonus payment or comparable payment, or by way of gift or other gratuity, to the extent such distributions are made in cash, to any Affiliate of such Person or to any director, officer or member of the management of an Affiliate of such Person; (e) of any Earn Out Obligations; or (f) on Shareholder Subordinated Debt; provided that payments by an Obligor in the course of its business to employees, officers and members of management of Obligors, expense reimbursement to directors shall not constitute Distributions hereunder.

“**Drawdown**” means an advance under the Credit Facility.

“**Drawdown Date**” means the Initial Drawdown Date or the Second Drawdown Date.

“**Earn Out Obligations**” means any amounts payable by an Obligor to any one or more sellers of applicable assets or Equity Interests after the Closing Date but following completion of an Acquisition and whether based on working capital purchase price adjustments, future performance, future profitability or otherwise (provided, for certainty,

reimbursement for expenses, payments in connection with indemnity claims and other similar payments shall not constitute Earn Out Obligations).

**“EBITDA”** means at any time, without duplication, the consolidated Net Income of the Borrower determined in accordance with GAAP increased by:

- (a) all non-recurring, extraordinary or unusual losses satisfactory to the Lenders;
- (b) unrealized foreign exchange losses;
- (c) transaction costs, fees and expenses incurred in connection with the transactions contemplated by the Senior Credit Agreement on January 27, 2023 not to exceed \$300,000;
- (d) transaction costs, fees and expenses incurred in connection with the transactions contemplated by the Senior Credit Agreement on August 31, 2023 and in connection with this Agreement on the Closing Date not to exceed \$500,000;
- (e) transaction costs, fees and expenses incurred in connection with the transactions contemplated by this Agreement on the Second Closing Date and in connection with the Senior Credit Agreement and the TQ Debt not to exceed \$500,000;
- (f) transaction costs, fees and expenses incurred in connection with Acquisitions permitted under this Agreement and consented to by the Lenders;
- (g) Interest Expense (including payments made in connection with Shareholder Subordinated Debt);
- (h) Income Tax Expense;
- (i) non-cash compensation (i.e., Equity Interest based);
- (j) Depreciation Expense;
- (k) Management Fees and board of director fees and expenses paid or accrued by the Borrower in accordance with this Agreement in an aggregate amount not to exceed \$750,000;
- (l) maintenance expenditures that are actually Capital Expenditures in nature that will be, at the end of the Fiscal Year, reversed into property, plant and equipment;
- (m) accrued Shareholder Backstop Fees;
- (n) fees and expenses incurred and to be incurred prior to December 31, 2024 in connection with the retention and advice provided by KPMG LLP and Alvarez & Marsal (x) in an aggregate amount not to exceed \$3,500,000, and (y) in an amount beyond \$3,500,000 provided that such amounts are funded from proceeds of Equity Interests issued by the Borrower or Shareholder Subordinated Debt;

less

- (o) dividend and interest income;
- (p) unrealized foreign exchange gains;
- (q) non-recurring, extraordinary or unusual gains;
- (r) the reversal at the end of the Fiscal Year of maintenance expenditures that were actually Capital Expenditures in nature into property, plant and equipment,

in each case to the extent such amounts were included in the calculation of Net Income for such period.

Should an Obligor make an Acquisition or complete a Disposition during any fixed period:

- (s) in respect of each (i) new Obligor which has become a Subsidiary of the Borrower, and (ii) Acquisition of Property constituting substantially all of the Property of a Person or a material portion of a division, business, operation or undertaking of a Person in such fiscal period, EBITDA shall be determined as if such Obligor had been a Subsidiary (or such Property had been owned) during the entire fiscal period; and
- (t) in respect of each (i) Obligor which has ceased to be a Subsidiary of the Borrower, and (ii) Dispositions of Property constituting substantially all of the Property of a Person or a material portion of a division, business, operation or undertaking of a Person in such fiscal period, EBITDA shall be determined as if such Obligor had not been a Subsidiary (or such Property had been Disposed of) during the entire fiscal period.

**“Eligible Assignee”** means any Person (other than a natural person, any Obligor or any Affiliate of an Obligor), in respect of which any consent that is required by Section 16.2 has been obtained.

**“Employee Plans”** means an employee benefit plan as defined in Section 3(3) of ERISA subject to Title I of ERISA that is or, within the preceding five years, has been established or maintained, or to which contributions are or, within the preceding five years, have been made or are required to be made, by an Obligor or any member of its Obligor’s Controlled Group or with respect to which an Obligor or any member of its Controlled Group has or would reasonably be expected to have liability.

**“Encumbrance”** means, in respect of any Person, any mortgage, debenture, pledge, hypothec, lien, charge, assignment by way of security, hypothecation or security interest granted or permitted by such Person or arising by operation of law, in respect of any of such Person’s Property, or any consignment or Capital Lease of Property by such Person as consignee or lessee or any other security agreement, trust or arrangement having the effect of security for the payment of any debt, liability or obligation, and **“Encumbrances”**, **“Encumbrancer”**, **“Encumber”** and **“Encumbered”** shall have corresponding meanings.

**“Environmental Liability”** means any liability of an Obligor arising from the breach of any Requirements of Environmental Law.

**“Equity Interest”** means (i) in the case of any corporation, all capital stock and any securities exchangeable for or convertible into capital stock, (ii) in the case of an association or business entity, any and all shares, interests, participation rights or other equivalents of corporate stock (however designated) in or to such association or entity, (iii) in the case of a partnership, limited liability company or unlimited liability company, partnership or membership interests (whether general or limited), as applicable, and (iv) any other ownership interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing Person, and including, in all of the foregoing cases described in clauses (i), (ii), (iii) or (iv), any warrants, rights or other options to purchase or otherwise acquire any of the interests described in any of the foregoing cases.

**“Equivalent Amount”** means with respect to any two currencies, the amount obtained in one such currency when an amount in the other currency is translated into the first currency using the Bank of Canada 4:30 p.m. spot rate on the prior Business Day with respect to which such computation is required for the purpose of this Agreement.

**“ERISA”** means the *Employee Retirement Income Security Act of 1974* (United States) as amended from time to time, or any successor statute thereto, and the final, interim, temporary and other binding regulations and published and binding interpretations thereof.

**“Event of Default”** means any of the events or circumstances described in Section 12.1.

**“Excluded Issuances”** means Equity Interests issued by the Borrower or Holdco to (i) management, employees and directors of the Borrower or Holdco in connection with their purchasing Equity Interests in the Borrower or Holdco from time to time; (ii) existing and future stakeholders of the Borrower or Holdco for the specific purpose of raising proceeds to enable the Obligors to (A) complete Acquisitions and Investments permitted pursuant to the terms of this Agreement, (B) pay Earn Out Obligations, (C) fund Capital Expenditures, and (D) prepay a Non-Consenting Lender in accordance with Section 14.14(e); (iii) existing and future shareholders of the Borrower or Holdco in connection with any conversion of Shareholder Subordinated Debt to Equity Interests; (iv) existing and future shareholders of the Borrower or Holdco in connection with a Shareholder Backstop Fee Payment Transaction; and (v) existing and future shareholders of the Borrower or Holdco in connection with the injection of funds pursuant to the Shareholder Contribution Agreement, and provided that “Excluded Issuances” shall also include any Specified Equity Contribution or Liquidity Contribution.

**“Excluded Swap Obligation”** means, with respect to any Guarantor (or the Borrower with respect to the obligations of any other Obligor under any Hedge Arrangement), any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Guarantor (or the Borrower as the case may be) of, or the grant by such Guarantor (or the Borrower as the case may be) of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s (or the Borrower’s as the case may be) failure for any reason to constitute an “eligible contract

participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guarantee of such Guarantor (or the Borrower as the case may be) or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one Hedge Arrangement, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Hedge Arrangements for which such guarantee or security interest is or becomes illegal.

**“Excluded Taxes”** means, with respect to the Agent or any Lender or any other recipient of any payment to be made by or on account of any obligation of an Obligor hereunder or under any other Loan Document (each, a **“Recipient”**), (a) taxes imposed on or measured by its net income, capital taxes and franchise taxes imposed on it (in lieu of net income taxes), in each case, (i) by the jurisdiction (or any political subdivision thereof) under the laws of which such Recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located or (ii) that are Other Connection Taxes, (b) any branch profits taxes or any similar tax imposed by any jurisdiction described in clause (a) in which such Recipient is located, (c) Taxes imposed under FATCA, (d) any withholding tax gross up obligation of the Borrower that is directly attributable to a Lender’s failure to comply with Section 15.2(f), (e) any withholding Taxes imposed on a payment by or on account of any obligation of an Obligor hereunder or under any other Loan Document: (i) to a Person with which the Obligor does not deal at arm’s length (for the purposes of the *Income Tax Act* (Canada)) at the time of making such payment or (ii) in respect of a debt or other obligation to pay an amount to a Person with whom the payer is not dealing at arm’s length (for the purposes of the *Income Tax Act* (Canada)) at the time of such payment and (f) any Taxes imposed on a Recipient by reason of such Recipient: (i) being a “specified shareholder” (as defined in subsection 18(5) of the *Income Tax Act* (Canada)) of any Obligor, or (ii) not dealing at arm’s length (for the purposes of the *Income Tax Act* (Canada)) with a “specified shareholder” (as defined in subsection 18(5) of the *Income Tax Act* (Canada)) of any Obligor.

**“Executive Order”** has the meaning set forth in Section 9.1(jj).

**“Fair Market Value”** means the fair market value of the Residual Equity as determined by the board of directors of Holdco, acting in good faith and based on reasonable valuation assessments and appropriate analysis, or as otherwise agreed or determined pursuant to Section 5.9. For certainty, the calculation of Fair Market Value of the Residual Equity shall exclude the value of the Equity Interests in Holdco which do not constitute Residual Equity, which shall include accrued value under the Borrower’s management incentive plan and any future capital invested in Holdco or the Borrower through Equity Interests or Shareholder Subordinated Debt following the Second Closing Date (other than for the purposes of replacing the Residual Equity). The calculation of the Fair Market Value of the Residual Equity shall also reflect proportionate adjustments for: (i) the consolidated Debt of Holdco (other than any Debt forming part of the Residual Equity, but for certainty including the TQ Debt); (ii) either positive or negative, as the case may be, to reflect a normalized level of net working capital at Holdco; and (iii) a reasonable amount for customary transaction costs that would be expected to be incurred by Holdco in connection with a Payment Trigger.

**“FATCA”** means Sections 1471 through 1474 of the IRC as of the date of this Agreement (or any amended or successor version that is substantively comparable and

not materially more onerous to comply with), any current or future regulations or official interpretations thereof or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the IRC.

**“Federal Flood Insurance”** means, federally backed Flood Insurance available under the National Flood Insurance Program to owners of real property improvements located in Special Flood Hazard Areas in a community participating in the National Flood Insurance Program.

**“FEMA”** means, the Federal Emergency Management Agency, a component of the U.S. Department of Homeland Security that administers the National Flood Insurance Program.

**“Financial Assistance”** means, without duplication and with respect to any Person, all loans made by that Person and guarantees or Contingent Obligations granted or incurred by that Person for the purpose of or having the effect of providing financial assistance to another Person or Persons, including, without limitation, letters of guarantee, letters of credit, legally binding comfort letters or indemnities issued in connection therewith, endorsements of bills of exchange (other than for collection or deposit in the ordinary course of business), obligations to purchase assets regardless of the delivery or non-delivery thereof and obligations to make advances or otherwise provide financial assistance to any other entity and for greater certainty **“Financial Assistance”** shall include any guarantee of any third party lease obligations.

**“FIRREA”** means, the *Financial Institutions Reform, Recovery and Enforcement Act of 1989*.

**“Fiscal Quarter”** means, subject to Section 10.4(j), each successive three-month period of the Borrower’s Fiscal Year ending on or about September 30, December 31, March 31 and June 30.

**“Fiscal Year”** means, subject to Section 10.4(j), a twelve-month period ending on June 30 of any year, as such date may be changed with the consent of the Majority Lenders.

**“Fixed Charge Coverage Ratio”** means, in respect of any period, the ratio calculated by dividing (i) the sum of EBITDA less (A) Unfunded Capital Expenditures (excluding Growth Capex), (B) cash paid Income Tax Expense, and (C) Permitted Distributions (other than Permitted Distributions listed in paragraphs (a), (b), (c), (e), (g) and (h) of the definition thereof), by (ii) Fixed Charges, all as determined on a consolidated basis for the most recently completed Four Quarter Period.

**“Fixed Charges”** means, without duplication and on a consolidated basis, with respect to the Borrower for any period, the sum of all scheduled principal repayments of the Senior Term Facility and the Senior Delayed Draw Facility, scheduled capital lease principal repayments and other scheduled principal repayments of Debt and cash paid and payable Interest Expense (excluding, however, interest payments and accrual of interest payments on Shareholder Subordinated Debt and any “PIK” or capitalized interest under the Credit Facility), in each case, in respect of Total Debt during such period.



**"Flood Insurance"** means, for any real Property located in a Special Flood Hazard Area, Federal Flood Insurance or private insurance that meets the requirements set forth by FEMA in its Mandatory Purchase of Flood Insurance Guidelines. Flood Insurance shall be in an amount equal to the lesser of (i) the "replacement cost value" of the buildings and any personal property Collateral located on the real Property or (ii) the maximum policy limits set under the National Flood Insurance Program, in each case, with deductibles not to exceed \$50,000.

**"Floor"** means the rate per annum of interest equal to 0%.

**"Foreign Official"** has the meaning set forth in Section 9.1(ii).

**"Four Quarter Period"** means as at the last day of any particular Fiscal Quarter of the Borrower, the period of four consecutive Fiscal Quarters which includes the Fiscal Quarter ending as of the date of such calculation (including the last day thereof) and the immediately preceding three Fiscal Quarters.

**"GAAP"** means the "Accounting Standards for Private Enterprises (ASPE)" in effect from time to time in Canada.

**"Governmental Authority"** means the government of Canada or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any supra-national bodies such as the European Union or the European Central Bank and including a Minister of the Crown, Superintendent of Financial Institutions or other comparable authority or agency.

**"Growth Capex"** means any Capital Expenditure made by any Person in connection with installing new production lines or upgrading existing production lines to increase capacity.

**"Guarantors"** means, collectively, all Subsidiaries of the Borrower from time to time but excluding Excluded Subsidiaries and includes, without limitation, each of those Persons identified on Schedule E and their successors and assigns and **"Guarantor"** means any one of them.

**"Hazardous Material"** shall mean any substance, product, waste, pollutant, material, chemical, contaminant, dangerous goods, hazardous waste, constituent or other material listed, regulated, or addressed under any Requirements of Environmental Law, including, without limitation, asbestos, petroleum product or by-product, polychlorinated biphenyls and radon.

**"Hedge Arrangement"** means, for any period, for any Person, any arrangement or transaction between such Person and any other Person which is an interest rate swap transaction, basis swap, forward interest rate transaction, commodity swap, interest rate option, forward foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency interest rate swap transaction, currency option or any other similar transaction (including any option with respect to any of such transactions or arrangements) designed to protect or mitigate against risks in interest, currency exchange or commodity price fluctuations.

**“Holdco”** means Joriki Topco Inc., a corporation formed under the laws of Ontario.

**“Hostile Take-Over Bid”** shall mean a Take-Over Bid by an Obligor or in which an Obligor is involved, in respect of which the board of directors (or persons performing similar functions) of the Person whose securities are subject to such Take-Over Bid has recommended rejection of such Take-Over Bid.

**“Hypothecary Representative”** has the meaning set forth in Section 17.16.

**“Income Tax Expense”** means, with respect to the Borrower, for any period, the aggregate, without duplication and on a consolidated basis, of all Taxes on the income of the Borrower for such period, determined in accordance with GAAP.

**“Indemnified Taxes”** means Taxes other than Excluded Taxes.

**“Initial Drawdown Date”** means the Closing Date.

**“Insolvency Legislation”** means legislation in any applicable jurisdiction relating to reorganization, arrangement, compromise or re-adjustment of debt, dissolution or winding-up, or any similar legislation, and specifically includes for greater certainty the *Bankruptcy and Insolvency Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada), the *Winding-Up and Restructuring Act* (Canada) and the *Bankruptcy Code* (United States).

**“Intellectual Property”** means the intellectual property in patents, patent applications, trade-marks, trade-mark applications, trade names, service marks, copyrights, copyright registrations and trade secrets including, without limitation, customer lists and information and business opportunities, industrial designs, proprietary software, technology, recipes and formulae and other similar intellectual property rights.

**“Interbank Reference Rate”** means the interest rate expressed as a percentage per annum which is customarily used by the Agent when calculating interest due by it or owing to it arising from correction of errors and other adjustments between it and Canadian chartered banks.

**“Intercreditor Agreement”** means the intercreditor agreement dated as of the Closing Date among, inter alia, the Agent, the Senior Agent and the Borrower, as such agreement may be amended, restated, supplemented or replaced from time to time.

**“Interest Expense”** of the Borrower means, for any period, without duplication and on a consolidated basis, the aggregate amount of interest and other financing charges paid or payable by the Borrower, on account of such period with respect to Debt including interest, amortization of discount and financing fees, commissions, discounts, the interest or time value of money component of costs related to factoring or securitizing receivables or monetizing inventory and other fees and charges payable with respect to letters of credit, letters of guarantee and bankers’ acceptance financing, standby fees, the interest component of Capital Leases, all as determined in accordance with GAAP.

**“Interest Payment Date”** means the fifteenth (15<sup>th</sup>) day of each calendar month.

**“Investment”** in any Person means any direct or indirect (a) acquisition of any Equity Interest in any other Person, or (b) loan or advance made to any other Person. In determining the amount of any Investment involving a transfer of any Property other than cash, such Property shall be valued at its fair market value at the time of such transfer. For greater certainty an Acquisition shall not be treated as an Investment.

**“IRC”** means *Internal Revenue Code of 1986* of the United States of America (as amended).

**“Judgment Conversion Date”** has the meaning set forth in Section 17.5(a)(ii).

**“Judgment Currency”** has the meaning set forth in Section 17.5(a).

**“Lenders”** means the Persons listed in Schedule A annexed hereto and **“Lender”** means any one of the Lenders and includes each of their successors and permitted assigns.

**“Lenders’ Counsel”** means the firm of Davies Ward Phillips & Vineberg LLP or such other firm of legal counsel as the Agent may from time to time designate and any and all local agent counsel retained by Davies Ward Phillips & Vineberg LLP for and on behalf of the Agent.

**“Lending Office”** means, with respect to a particular Lender, the branch or office specified in Schedule A from which such Lender makes its advances and to which the Agent disburses payments received for the benefit of such Lender.

**“Liquidity”** means, in the case of the Borrower on a consolidated basis, the sum of (i) availability under the Revolving Facility and the Revolving B Facility, plus (ii) cash on hand, and (iii) that portion of the TQ Debt that has not yet been funded.

**“Liquidity Event”** has the meaning set forth in the Unanimous Shareholder Agreement.

**“Loan Documents”** means this Agreement, the Security, each Subordination Agreement, all guarantees delivered by any Obligor pursuant to this Agreement, the Intercreditor Agreement, the Shareholder Contribution Agreement, each fee letter and each document, agreement, instrument and certificate delivered to the Agent or any Lenders by or on behalf of an Obligor or any other Person (in the case of any other Person, as required by the terms of this Agreement) on or after the Closing Date in each case as the same may from time to time be supplemented, amended or restated, and **“Loan Document”** shall mean any one of the Loan Documents.

**“LRG”** means a Person that provides a limited recourse guarantee in favour of the Agent of the Obligations of the Borrower.

**“Majority Lenders”** means Lenders holding greater than 66⅔% of the Commitments under the Credit Facility.

**“Management Fees”** means management fees paid by the Borrower to TorQuest Fund IV GP Inc. and TorQuest Capital Fund IV GP Inc. pursuant to any management agreement between the Borrower and such Persons in effect from time to time.

**“Material Adverse Effect”** shall mean a material adverse effect on (a) the business, operations, properties, assets or condition (financial or otherwise) of the Borrower on a consolidated basis, (b) the legality, validity or enforceability of any of the Loan Documents considered as a whole, including the validity, enforceability, perfection or priority of any encumbrance created under any of the Security considered as a whole, (c) the ability of the Obligors, as a whole, to pay or perform any of their debts, liabilities or obligations under any of the Loan Documents, or (d) the right, entitlement or ability of the Agent or the Lenders to enforce their rights or remedies under any of the Loan Documents.

**“Material Contracts”** means each of the agreements identified in Schedule 9.1(t) and any agreement, contract or legally binding arrangement entered into from time to time by an Obligor or to which any of their property or assets may be subject for which breach, non-performance, cancellation, failure to renew, termination, revocation or lapse could reasonably be expected to have a Material Adverse Effect. For certainty, the [REDACTED] Contract, the [REDACTED] Contract, the [REDACTED] Contract and the [REDACTED] Contract are not Material Contracts.

**“Material Licences”** means each licence, permit or approval issued by any Governmental Authority to any Obligor the breach or default in respect of which could reasonably be expected to result in a Material Adverse Effect.

**“Maturity Date”** means the earlier of December 15, 2026 and the date on which the Credit Facility is terminated pursuant to Section 12.2.

**“Mortgages”** means, the first lien mortgages or deeds of trust executed by any Obligor in favour of the Agent, by which such Obligor has granted to the Agent, as security for the Obligations, a first priority ranking Encumbrance (subject to Permitted Encumbrances) on any Mortgaged Property to secure the Obligations.

**“Mortgaged Property”** means each parcel of real property and the improvements thereto owned by any Obligor on the Closing Date or acquired thereafter with respect to which a Mortgage is to be granted under the Security Documents and includes each other parcel of real property and the improvements thereto owned by any Obligor with respect to which a Mortgage is granted pursuant to the Security Documents.

**“Multiemployer Plan”** means any US Pension Plan that is a “multiemployer plan” described in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA.

**“Net Income”** means, for any period, with respect to the Borrower, the consolidated net income (loss) of the Borrower excluding all dividend and interest income, for such period, all as determined in accordance with GAAP.

**“Net Proceeds”** means any one or more of the following:

- (a) with respect to any Dispositions, the net amount equal to the aggregate amount received in cash in connection with such Disposition (including, without limitation, the release of any amount from an indemnity reserve, escrow or similar fund established in connection with such Disposition, but only as and when received), less the sum of reasonable fees, including reasonable accounting, advisory and legal fees, commissions and other out-of-pocket expenses, provision for taxes

payable by such Obligor attributable to such Disposition (as evidenced by supporting documentation provided to the Agent), the unwinding of any hedge agreements incurred or paid for by an Obligor in connection with such Disposition, and the payment of any Debt secured by Encumbrances on the assets Disposed to the extent that such Encumbrances are permitted hereunder to rank in priority to the Security;

- (b) with respect to the receipt of proceeds under any insurance policy (other than business interruption insurance, representation and warranty insurance or liability policy), the net amount equal to the aggregate amount received (or receivable) in cash by an Obligor in connection with such insurance proceeds less a provision for taxes payable by such Obligor attributable to such insurance proceeds and any legal fees incurred in connection with the settlement or collection thereof; and
- (c) with respect to the issuance of any Equity Interests or Debt by any Person or of any capital contributions by any Person in such Person, the net amount equal to the aggregate amount received in cash in connection with such issuance or contribution by any Person in such Person, less the sum of reasonable fees, including reasonable accounting, advisory and legal fees, commissions and other out-of-pocket expenses (as evidenced by supporting documentation provided to the Agent) incurred or paid for by such Person in connection with the issuance of any such Equity Interests or Debt or of any capital contributions by any Person in such Person.

**"Non-Arm's Length"** and similar phrases have the meaning attributed thereto for the purposes of the *Income Tax Act* (Canada); and **"Arm's Length"** shall have the opposite meaning.

**"[REDACTED]"** means [REDACTED], a Delaware corporation.

**"[REDACTED] Tetra Line #7"** means the line identified as such in Exhibit I.

**"[REDACTED] Contract"** means the contract dated as of March 1, 2021 between [REDACTED] and the Borrower.

**"Obligations"** means, with respect to any Obligor, all of its present and future indebtedness, liabilities and obligations of any and every kind, nature or description whatsoever (whether direct or indirect, joint or several or joint and several, absolute or contingent, matured or unmatured, in any currency and whether as principal debtor, guarantor, surety or otherwise, including without limitation any interest that accrues thereon after or would accrue thereon but for the commencement of any case, proceeding or other action, whether voluntary or involuntary, relating to the bankruptcy, insolvency or reorganization whether or not allowed or allowable as a claim in any such case, proceeding or other action) to each of the Agent, the Lenders (and their Affiliates), and any of them under, in connection with, relating to or with respect to each of the Loan Documents, and any unpaid balance thereof, provided that in the case of US Obligors' Obligations shall not include any Excluded Swap Obligations.

**"Obligors"** means, collectively, the Borrower and the Guarantors. As of the Second Closing Date, the Obligors consist of each of the Persons identified on Schedule E.

**“OFAC”** means The Office of Foreign Assets Control of the US Department of the Treasury.

**“OFAC Event”** has the meaning set forth in Section 9.1(ii).

**“OFAC Sanctions Programs”** means all laws, regulations, and Executive Orders administered by OFAC and all economic and trade sanction programs administered by OFAC or the US Department of State, any and all similar United States federal laws, regulations or Executive Orders, and any similar laws, regulations or orders adopted by any State within the United States.

**“OFAC SDN List”** means the list of Specially Designated Nationals and Blocked Persons administered by OFAC, in each case, as renewed, extended, amended or replaced.

**“Organizational Documents”** means, with respect to any Person, such Person’s articles or other charter documents, by-laws, shareholder agreement, partnership agreement, joint venture agreement, limited liability company agreement or trust agreement, as applicable, and any and all other similar agreements, documents and instruments relative to such Person.

**“Other Connection Taxes”** shall mean, with respect to the Agent, any Lender or any other recipient of any payment to be made by or on account of an Obligor hereunder or under any other Loan Document, Taxes imposed as a result of a present or former connection between such person and the jurisdiction imposing such Tax (other than connections arising from such person having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to this Agreement or enforced this Agreement or any other Loan Document).

**“Other Taxes”** means all present or future stamp, court or documentary, intangible, recording, filing or similar taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery, performance, registration or enforcement of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement or any other Loan Document.

**“Participant”** shall have the meaning ascribed to such term in Section 16.4.

**“Payment Trigger”** means a Change of Control, a Liquidity Event or a sale of all or substantially all of the assets of Holdco or the Borrower, as applicable.

**“PBGC”** means the Pension Benefit Guaranty Corporation or any Person succeeding to any or all of its functions under ERISA.

**“Permitted Acquisition”** means an Acquisition complying with the terms and provisions provided for in Section 10.4(i).

**“Permitted Debt”** means:

- (a) Debt under this Agreement;

- (b) Debt in respect of Purchase Money Security Interests and Capital Leases in an outstanding amount not to exceed \$10,000,000 in the aggregate at any time;
- (c) Permitted Intercompany Debt;
- (d) Shareholder Subordinated Debt;
- (e) the TQ Debt;
- (f) Qualifying Hedge Arrangements;
- (g) Earn Out Obligations in connection with Permitted Acquisitions;
- (h) Debt of the Borrower owed under any credit card facility provided by BNS to the Borrower;
- (i) the Senior Debt;
- (j) accrued Shareholder Backstop Fee; and
- (k) Debt consented to in writing by the Lenders from time to time.

**“Permitted Disposition”** means (a) the Disposition of inventory in the ordinary course of business, (b) Dispositions of worn-out or obsolete equipment in the ordinary course of business, (c) Dispositions of Property between Obligor, (d) other Dispositions by Obligor to non-Obligors to the extent that no Default or Event of Default exists and (x) the fair market value of the assets Disposed of by all Obligor pursuant to this clause (d) does not exceed \$1,000,000 in the aggregate during any Fiscal Year, or (y) the Disposition is of underutilized equipment in the ordinary course of business, and (e) Dispositions pursuant to the Receivables Purchase Agreement.

**“Permitted Distributions”** means:

- (a) Distributions paid by an Obligor to another Obligor;
- (b) payments made on Permitted Intercompany Debt;
- (c) subject to compliance with the terms of the applicable Subordination Agreement, interest payments on Shareholder Subordinated Debt;
- (d) subsequent to June 30, 2025, Distributions to Holdco for the specific purpose of enabling Holdco to repurchase or redeem Equity Interests or Debt of Holdco held by an employee or director of an Obligor (or his or her holding vehicle) upon the termination, resignation, retirement, death or permanent disability of such Person in an aggregate annual amount not to exceed \$2,000,000 in any Fiscal Year (pro-rated for any partial Fiscal Year), provided that no such Distributions may be made if there exists a Default or Event of Default or if the making of such payment would result in the occurrence of a Default or an Event of Default (including without limitation the financial covenants set out in Section 10.2);

- (e) provided that no Default or Event of Default exists or would occur after giving effect to such payment, payment of Earn Out Obligations which have become due;
- (f) Management Fees paid by the Borrower to TorQuest and director fees of the Borrower in an aggregate annual amount not to exceed \$750,000 in any Fiscal Year (pro-rated for any partial Fiscal Year), provided that no such payments may be made if there exists a Default or Event of Default or if the making of such payment would result in the occurrence of a Default or an Event of Default (including without limitation the financial covenants set out in Section 10.2). Until June 30, 2025, no Management Fees may be paid and only independent director fees may be paid subject to an amount not to exceed \$350,000 in any Fiscal Year;
- (g) payments in respect of Shareholder Subordinated Debt to the extent made exclusively with the proceeds of Excluded Issuances; and
- (h) payments pursuant to a Shareholder Backstop Fee Payment Transaction, provided that there exists no Event of Default and all steps thereof are completed on the same Business Day.

**“Permitted Encumbrances”** means, with respect to any Person, the following:

- (a) Encumbrances for Taxes, assessments and other governmental charges or levies not yet due or for which installments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person and in respect of which reasonable reserves under GAAP are maintained;
- (b) undetermined or inchoate liens, rights of distress and charges incidental to current operations which have not at such time been filed or exercised and of which none of the Lenders has been given notice, or which relate to obligations not due or payable, or the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person;
- (c) reservations, limitations, provisos and conditions expressed in any original grants from the Crown or other grants of real or immovable property, or interests therein, which do not materially affect the use of the affected land for the purpose for which it is used by that Person;
- (d) zoning, land use and building restrictions, survey exceptions, by-laws, regulations and ordinances of federal, provincial, state, municipal and other Governmental Authorities, licences, easements, rights-of-way and rights in the nature of easements (including, without limiting the generality of the foregoing, licences, restrictions, easements, servitudes, rights-of-way and rights in the nature of easements for railways, sidewalks, public ways, sewers, drains, gas, steam and water mains or electric light and power, or telephone and telegraph conduits, poles, wires and cables) which do not materially impair the use of the affected land for the purpose for which it is used by that Person;



- (e) title defects, encroachments or irregularities or other matters relating to title which are of a minor nature and which in the aggregate do not materially impair the use of the affected property for the purpose for which it is used by that Person;
- (f) the right reserved to or vested in any municipality or governmental or other public authority by the terms of any lease, licence, franchise, grant or permit acquired by that Person or by any statutory provision to terminate any such lease, licence, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;
- (g) the Encumbrance resulting from the deposit of cash or securities in connection with contracts, tenders or expropriation proceedings, or to secure workers compensation, employment insurance, performance or surety bonds in the ordinary course of business;
- (h) security given to a public utility or any municipality or Governmental Authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of its business provided that such security does not materially impair the use of the affected property for the purpose for which it is used by that Person;
- (i) liens securing appeal bonds or other similar liens arising in connection with court proceedings (including security for costs of litigation where required by law and letters of credit) or any other instrument serving a similar purpose not to exceed \$1,000,000 in aggregate outstanding at any time;
- (j) the Encumbrance created by a judgment of a court of competent jurisdiction, as long as the judgment is being contested diligently and in good faith by appropriate proceedings or is promptly satisfied by that Person and does not result in an Event of Default;
- (k) Encumbrances imposed by law, such as carriers', repairmen's, warehousemen's and mechanics' liens or other liens arising out of judgments or awards with respect to which an appeal or other proceeding for review is being prosecuted (and as to which any foreclosure or other enforcement proceeding shall have been effectively stayed) not to exceed \$750,000 in aggregate outstanding at any time;
- (l) Encumbrances over assets created by an operating lease;
- (m) Encumbrances arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of combination of accounts or similar rights in the ordinary course of conducting day-to-day banking business in relation to deposit accounts or other funds maintained with a creditor depository institution;
- (n) Encumbrances arising from the right of distress enjoyed by landlords or Encumbrances otherwise granted to landlords (including, without limitation, Encumbrances over rent deposits), in either case, to secure the payment of arrears of rent in respect of leased properties;

- (o) servicing agreements, development agreements, site plan agreements and other agreements with Governmental Authorities pertaining to the use or development of any of the assets of the Person, provided same are complied with in all material respects and do not materially impair the use of such assets in the operation of the business of such Person;
- (p) the Security;
- (q) the TQ Security provided that such Encumbrances are subject to the provisions of the TQ Subordination Agreement;
- (r) the Senior Security;
- (s) Purchase Money Security Interests and Capital Leases, provided that such Encumbrances secure Permitted Debt;
- (t) Encumbrances existing as at the Closing Date created pursuant to, or arising under, the Receivables Purchase Agreement; and
- (u) such other Encumbrances as agreed to in writing by the Majority Lenders in accordance with this Agreement.

**"Permitted Intercompany Debt"** means Debt owing by one Obligor to another Obligor.

**"Person"** means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

**"Premium Payment Amount"** means an amount equal to 3.5% of the Residual Equity Value, calculated as of the Premium Payment Trigger Date.

**"Premium Payment Trigger Date"** means the earlier of (i) the date of consummation of a Payment Trigger, and (ii) the date that is five years from the Second Closing Date.

**"Property"** means, with respect to any Person, all or any portion of its undertaking, property and assets, both real and personal, including for greater certainty any share in the capital of a corporation or ownership interest in any other Person.

**"Proportionate Share"** means in respect of each Lender from time to time, the percentage of the Credit Facility which a Lender has agreed to advance to the Borrower, determined by dividing the Lender's Commitment in respect of the Credit Facility by the aggregate of all of the Lenders' Commitments with respect to the Credit Facility.

**"Purchase Money Security Interest"** means an Encumbrance created or assumed by an Obligor securing Debt incurred to finance the unpaid acquisition price of personal Property (but, for certainty, excluding Equity Interests or in connection with an Acquisition) provided that in each case (i) such Encumbrance is created prior to, or concurrently with, the acquisition of such personal Property, (ii) such Encumbrance does not at any time encumber any Property other than the Property financed or refinanced (to the extent the principal amount is not increased) by such Debt and proceeds thereof, (iii) the amount of Debt secured thereby is not increased subsequent to such acquisition, and (iv) the principal amount of Debt secured by any such Encumbrance at no time

exceeds 100% of the original acquisition price of such personal Property at the time it was acquired.

**“QFC”** has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

**“Qualified ECP Obligor”** means, in respect of any Swap Obligation, each Obligor that has total assets exceeding \$10,000,000 at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act and can cause another person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

**“Qualifying Hedge Arrangements”** means a Hedge Arrangement provided by a Senior Lender or an Affiliate of a Senior Lender and is not speculative.

**“RCRA”** means the *Solid Waste Disposal Act*, as amended by the *Resource Conservation and Recovery Act of 1976* and *Hazardous and Solid Waste Amendments of 1984*, 42 U.S.C. §§6901 et seq., and any future amendments.

**“Receivables Purchase Agreement”** means the receivables purchase agreement between the [REDACTED] Company and JPMorgan Chase Bank, National Association relating to the sale by the Borrower of accounts receivables of the [REDACTED] Company, as amended, modified or supplemented from time to time.

**“Recipient”** has the meaning set forth in the definition of “Excluded Taxes”.

**“Related Parties”** means, with respect to any Person, such Person’s Affiliates and the directors, officers, employees and agents of such Person and of such Person’s Affiliates.

**“Relevant Governmental Body”** means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

**“Relevant Jurisdiction”** means, from time to time, with respect to a Person that is granting Security hereunder, any province or territory of Canada, any state of the United States or any other country, political subdivision thereof, in which such Person has its jurisdiction of formation, chief executive office or chief place of business or has tangible Property (other than Property in transit) and, for greater certainty, at the Second Closing Date includes the provinces and states set forth in Schedule 9.1(r) attached hereto.

**“Repayment Notice”** means the notice substantially in the form annexed hereto as Schedule C.

**“Reportable Event”** means any of the events set forth in Section 4043 of ERISA, other than an event for which the provision of notice has been waived.

**“Requirements of Environmental Law”** means all requirements of the common law or of statutes, regulations, by-laws, ordinances, treaties, judgments and decrees, and (to

the extent that they have the force of law) rules, guidelines, orders, approvals, notices, permits and directives of any federal, territorial, provincial, state, regional, municipal or local judicial, regulatory or administrative agency, board or governmental authority in Canada the United States and any other jurisdiction in which any Obligor has operations or assets, where such requirements relate to environmental or occupational health and safety matters (as they relate to exposure to a Hazardous Material) and the assets and undertaking of any Obligor and the intended uses thereof, including but not limited to, all such requirements relating to: (a) the protection, preservation or remediation of the natural environment (the air, land, surface water or groundwater); (b) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation; (c) occupational safety and health (as they relate to exposure to a Hazardous Material); and (d) the regulation of Hazardous Materials.

**“Requirements of Law”** means, as to any Person, the Organizational Documents of such Person and any Applicable Law, or determination of a Governmental Authority having the force of law (but nevertheless including determinations of a Governmental Authority not having the force of law if responsible and prudent Persons engaged in a business similar to the Business would observe such determinations), in each case applicable to or binding upon such Person or any of its business or Property or to which such Person or any of its business or Property is subject.

**“Residual Equity”** means the following securities of Holdco:

- (i) the Class A Shares and Class B Shares of Holdco that are issued and outstanding on the Second Closing Date;
- (ii) the principal and accrued and capitalized interest outstanding under the convertible promissory grid notes issued on October 1, 2019 by Holdco to TorQuest Partners Fund IV, L.P. and TorQuest Partners Fund (U.S.) IV, L.P. in the original aggregate principal amount of \$23,594,594;
- (iii) the securities of Holdco issued in 2024 in connection with the repayment of the promissory grid notes issued in 2023 by Holdco to TorQuest Partners Fund IV, L.P., TorQuest Partners Fund (U.S.) IV, L.P., TorQuest Capital Fund IV, L.P., Devji Trading Company Ltd., Fran Mulhern and David Schelter in the original aggregate principal amount of \$17,500,000; and
- (iv) the amount of dividends, interest or distributions paid in cash on any of the foregoing, included on the basis that such cash amounts, when paid, were notionally converted to shares or securities of the type otherwise issuable at the relevant time pursuant to the terms of such shares or securities of Holdco,

and includes: (a) any shares or securities into which such shares or securities of Holdco listed above may be converted, exchanged or changed or which result from a consolidation, subdivision, reclassification or redesignation of the shares or securities of Holdco; (b) any shares or securities which are received as a dividend, distribution, interest payment or other entitlement payable in respect of such shares or securities of Holdco listed above; and (c) any shares or securities which may be issued in place of such shares or securities listed above as a result of an amalgamation, merger, arrangement or other reorganization of or including Holdco. For greater certainty, the Residual Equity represents and is to be construed, at all applicable times, as a portion of

the fully diluted equity securities of Holdco, as adjusted to reflect clause (iv) of this definition, as applicable.

**“Residual Equity Value”** means:

- (i) In connection with a Premium Payment Trigger Date identified in part (i) of the definition thereof, (a) the amount paid to the holders of the Residual Equity (whether in shares or in any other form of consideration) in connection with the consummation of such Payment Trigger, including cash amounts received, cash amounts funded into escrow accounts at closing, and the deemed value as of such date of any non-cash consideration received by such holders in connection with such Payment Trigger or (b) where less than all of the Residual Equity is sold by the holders thereof as a result of such Payment Trigger, the imputed aggregate value of all of the Residual Equity (on a fully diluted basis) in connection with such Payment Trigger. For certainty, for the purposes of calculating the Residual Equity Value (x) the amount owing to the holders of Residual Equity shall not include any post-closing purchase price adjustments, and (y) the amount paid at closing of the Payment Trigger shall not take into account any contingent payments, such as earn outs or similar contingent amounts, with all future amounts owing to Roynat related to such amounts (if any) to be dealt with under the Side Agreement.
- (ii) In connection with a Premium Payment Trigger Date identified in part (ii) of the definition thereof, the Fair Market Value of the Residual Equity.

**“Restricted Person”** has the meaning set forth in Section 9.1(jj).

**“Roynat”** means Roynat Capital Inc.

**“Sanctioned Entity”** means (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, (d) a Person resident in or determined to be resident in a country, in each case, that is subject to a country sanctions program administered and enforced by OFAC.

**“Sanctioned Person”** means a person named on the list of Specially Designated Nationals maintained by OFAC.

**“Sanction(s)”** means any international economic sanction administered or enforced by the United States Government (including without limitation, OFAC), the Government of Canada, the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority.

**“Second Closing Date”** means March 11, 2024.

**“Second Closing Date Outstanding Amount”** has the meaning set forth in Section 2.1.

**“Second Drawdown Date”** means October 6, 2023.

**“Security”** means all security (including guarantees) held from time to time by or on behalf of the Lenders or the Agent on behalf of the Lenders, securing or intended to secure directly or indirectly repayment of the Obligations and includes, without limitation, all security described in Article 11.

**“Security Documents”** means the documents referred to in Article 11.

**“Senior Agent”** means BNS, in its capacity as senior agent pursuant to the Senior Documents.

**“Senior Credit Agreement”** means the fourth amended and restated credit agreement dated as of March 11, 2024 between the Borrower, the Senior Agent and the Senior Lenders, as such agreement may be further amended, restated, supplemented or replaced from time to time in accordance with this Agreement and the Intercreditor Agreement.

**“Senior Debt”** means all indebtedness owing to the Senior Lenders pursuant to the Senior Credit Agreement.

**“Senior Delayed Draw Facility”** means the delayed draw facility established pursuant to the Senior Credit Agreement.

**“Senior Documents”** means the Senior Credit Agreement, the Senior Security and all other material documents executed in connection with the Senior Debt.

**“Senior Lenders”** means those lenders pursuant to the Senior Credit Agreement and their successors and permitted assigns.

**“Senior Revolving B Facility”** means the “Revolving B Facility” established pursuant to the Senior Credit Agreement.

**“Senior Security”** means the guarantees and security delivered by the Obligors to the Senior Agent as permitted pursuant to the terms of the Intercreditor Agreement.

**“Senior Term Facility”** means the term facility established pursuant to the Senior Credit Agreement.

**“Shareholder Backstop Fee”** means a fee accruing to shareholders of Holdco that are party to the Shareholder Contribution Agreement, in the maximum amount of 6% per annum on the undrawn balance of the Senior Revolving B Facility, and in the maximum amount of 12% per annum on the drawn balance of the Senior Revolving B Facility.

**“Shareholder Backstop Fee Payment Transaction”** means payment or other settlement of the Shareholder Backstop Fee (i) by way of issuance of Shareholder Subordinated Debt or Equity Interests of the Borrower, (ii) in cash provided that such cash is immediately reinvested either (x) into the Borrower by way of Equity Interests or Shareholder Subordinated Debt, or (y) into Holdco and then by Holdco into the Borrower by way of Equity Interests of Shareholder Subordinated Debt. For certainty, all such Equity Interests of the Borrower shall be pledged in favour of the Agent.

**“Shareholder Contribution Agreement”** means the shareholder contribution agreement provided by TorQuest (and certain other shareholders of Holdco) in favour of the Senior Agent pursuant to which such parties agree, under certain circumstances, to inject funds via Shareholder Subordinated Debt to repay the obligations pursuant to the Senior Revolving B Facility.

**“Shareholder Subordinated Debt”** means debt owing by an Obligor to Holdco or one or more shareholders of Holdco, or any of them, provided that such debt is deeply subordinated and postponed to the Obligations and the Security and pledged to the Agent (with no payments of principal or interest while the Obligations are outstanding other than payments of interest that are re-invested immediately but in any event within two (2) Business Days provided that no such payments may be made should there exist a Default or Event of Default) pursuant to a Subordination Agreement.

**“Side Agreement”** has the meaning set forth in Section 5.9(e).

**“Special Flood Hazard Area”** means, an area that FEMA’s current flood maps indicate has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100 year flood) in any given year or otherwise show the property to be located in a special flood hazard area or have a high or moderate risk of flooding.

**“Subordinated PIK Amount”** has the meaning set forth in Section 5.8(a).

**“Subordinated PIK Period”** has the meaning set forth in Section 5.8(a).

**“Subordination Agreement”** means a subordination and postponement agreement from each holder of Shareholder Subordinated Debt in favour of the Agent, in form and substance satisfactory to the Agent.

**“Subsidiary”** means, at any time, as to any Person, any other Person, if at such time the first mentioned Person owns, directly or indirectly, securities or other ownership interests in such other Person (x) having ordinary voting power to elect a majority of the board of directors or persons performing similar functions for such other Person or (y) that constitute at least 50.1% of the issued and outstanding Equity Interests of such Person, and shall, in each case, include any other Person in like relationship to a Subsidiary of such first mentioned Person.

**“Swap Obligation”** means, with respect to any Guarantor (or the Borrower with respect to the obligations of any other Obligor under any Hedge Arrangement), any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

**“Take-Over Bid”** shall mean either (a) an offer to acquire outstanding voting or equity securities of a class of a Person whose shares are publicly traded where the securities that are the subject of such offer, together with the offeror’s securities, constitute at least 20% of the outstanding securities of that class of securities on the date the offer is made, or (b) any other event which is a take-over bid within the meaning attributed to such term by any law, treaty, rule, regulation, or requirement of any stock exchange or securities commission, or determination of any arbitrator, court, stock exchange, securities commission or other Governmental Authority, in each case, applicable to or binding on any Obligor.

**"Taxes"** means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

**"TorQuest"** means TorQuest Partners Fund IV, L.P., TorQuest Capital Fund IV, L.P. and TorQuest Partners Fund (U.S.) IV, L.P.

**"Total Debt"** means Debt (excluding obligations under Qualifying Hedge Arrangements referred to in clause (j) of the definition of "Debt", Shareholder Subordinated Debt and Earn Out Obligations to the extent not due and payable) less Unrestricted Cash.

**"Total Debt to EBITDA Ratio"** means, at any time, the ratio of (a) Total Debt at such time to (b) EBITDA for the most recently completed Four Quarter Period.

**"TQ Debt"** is defined in Section 3.2(l).

**"TQ Security"** means the Encumbrances listed on Schedule 1.1 granted to secure the TQ Debt.

**"TQ Debt"** means the Shareholder Subordinated Debt in the aggregate principal amount of \$40,000,000 advanced by Holdco to the Borrower.

**"TQ Subordination Agreement"** means a Subordination Agreement relating to the TQ Debt and the TQ Security.

**"Unanimous Shareholder Agreement"** means the unanimous shareholder agreement dated October 1, 2019 among Holdco, TorQuest and the other shareholder parties thereto, as amended by the first amendment to the unanimous shareholder agreement dated September 30, 2022 among Holdco, TorQuest and the other shareholder parties thereto, as in effect on September 30, 2022.

**"Unfunded Capital Expenditures"** shall mean all cash paid Capital Expenditures made by the Borrower that have been paid from the Borrower's consolidated cash on its balance sheet.

**"United States Bankruptcy Code"** means Title 11 of the United States Code entitled, "Bankruptcy", as now and hereafter in effect, or any successor statute.

**"United States Dollars", "US Dollars" and "US \$"** means the lawful money of the United States of America.

**"Unrestricted Cash"** means up to \$5,000,000 of cash and/or Cash Equivalents held by the Obligors in which the Senior Agent has a first priority perfected Encumbrance with such funds being maintained in an account with BNS.

**"US EBITDA"** means EBITDA attributable to the US Facility.

**"US Facility"** means the Borrower's or its Subsidiary's manufacturing facility located at 575 Research Drive, Pittston, PA 18640, United States, United States of America.



**“US Government Securities Business Day”** means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

**“US Obligor”** means any Obligor existing pursuant to the laws of any State of the United States of America.

**“US Pension Plan”** means any employee pension benefit plan covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the IRC (other than a Multiemployer Plan) that either (i) is maintained or, within the preceding five years, has been maintained, by the Obligors or any member of the Obligors’ Controlled Group, or (ii) with respect to which an Obligor has or would reasonably be expected to have liability (including on account of its membership in a Controlled Group).

**“[REDACTED] Carton Line #6”** means the line identified as such in Exhibit I.

**“[REDACTED] Contract”** means the contract to be entered into between one or more Obligors and [REDACTED] and/or its affiliates.

**“Welfare Plan”** means an employee welfare plan within the meaning of Section 3(1) of ERISA that is applicable to employees of an Obligor resident in the United States of America.

**“Withholding Agent”** means any Obligor or the Agent, as applicable.

## 1.2 Headings

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## 1.3 Accounting Practices

All accounting terms not specifically defined in this Agreement shall be interpreted in accordance with GAAP. If any accounting changes occur and such changes result in a material change in the calculation of the financial covenants, standards or terms used in this Agreement, then the Borrower, the Agent and the Lenders agree to enter into negotiations in order to amend such provisions of this Agreement, so as to equitably reflect such accounting changes with the desired result that the criteria for evaluating the applicable Obligor’s financial condition shall be the same after such accounting changes as if such accounting changes had not been made; provided, however, that the agreement of the Majority Lenders to any required amendments of such provisions shall be sufficient to bind all Lenders. If the Borrower and the Majority Lenders agree upon the required amendments, then after appropriate amendments have been executed and the underlying accounting change with respect thereto has been implemented, any reference to GAAP contained in this Agreement or in any other Loan Document shall, only to the extent of such accounting change, refer to GAAP, consistently applied after giving effect to the implementation of such accounting change. If the Borrower and the Majority Lenders cannot agree upon the required amendments within thirty (30) days following the date of implementation of any accounting change, then all calculations of financial covenants and other standards and terms in this Agreement and the other Loan

Documents shall continue to be prepared, delivered and made without regard to the underlying accounting change. In such case, the Borrower shall, in connection with the delivery of any financial statements under this Agreement, provide a management prepared reconciliation of the financial covenants to such financial statements in light of such accounting changes.

#### **1.4            Permitted Encumbrances**

The inclusion of reference to Permitted Encumbrances in any Loan Document is not intended to subordinate and shall not subordinate, and shall not be interpreted as subordinating, any Encumbrance created by any of the Security to any Permitted Encumbrance.

#### **1.5            Currency**

Unless otherwise specified in this Agreement, all references to dollar amounts (without further description) will mean Canadian Dollars.

#### **1.6            Paramountcy**

In the event of a conflict in or between the provisions of this Agreement and the provisions of any Schedule annexed hereto or any of the other Loan Documents then, notwithstanding anything contained in such Schedule or other Loan Document, the provisions of this Agreement will prevail and the provisions of such Schedule or other Loan Document will be deemed to be amended to the extent necessary to eliminate such conflict. In particular, if any act or omission of an Obligor is expressly permitted under this Agreement but is expressly prohibited under any Schedule annexed hereto or another Loan Document, such act or omission shall be permitted. If any act or omission is expressly prohibited under any Schedule annexed hereto or a Loan Document (other than this Agreement), but this Agreement does not expressly permit such act or omission, or if any act is expressly required to be performed under such Schedule or such Loan Document but this Agreement does not expressly relieve the applicable Obligor from such performance, such circumstance shall not constitute a conflict in or between the provisions of this Agreement and the provisions of such Schedule or Loan Document.

#### **1.7            Non-Business Days**

Unless otherwise expressly provided in this Agreement, whenever any payment is stated to be due on a day other than a Business Day, the payment will be made on the immediately following Business Day. Unless otherwise expressly provided in this Agreement, whenever any action to be taken is stated or scheduled to be required to be taken on, or (except with respect to the calculation of interest or fees) any period of time is stated or scheduled to commence or terminate on, a day other than a Business Day, the action will be taken or the period of time will commence or terminate, as the case may be, on the immediately following Business Day.

#### **1.8            Interest Payments and Calculations**

(a) All interest payments to be made under this Agreement will be paid without allowance or deduction for deemed re-investment or otherwise, both before and after maturity and before and after default and/or judgment, if any, until payment of the amount on which such interest is accruing, and interest will accrue on overdue interest, if any.

(b) Unless otherwise stated, wherever in this Agreement reference is made to a rate of interest or rate of fees “per annum” or a similar expression is used, such interest or fees will be calculated on the basis of a calendar year of three-hundred and sixty-five (365) days or three-hundred and sixty-six (366) days, as the case may be, and using the nominal rate method of calculation, and will not be calculated using the effective rate method of calculation or on any other basis that gives effect to the principle of deemed re-investment of interest.

(c) For the purposes of the *Interest Act* (Canada) and disclosure under such Act, whenever interest to be paid under this Agreement is to be calculated on the basis of a year of three-hundred and sixty-five (365) days or any other period of time that is less than a calendar year, the yearly rate of interest to which the rate determined pursuant to such calculation is equivalent is the rate so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by either 365 or such other period of time, as the case may be.

(d) Unless expressly agreed otherwise under this Agreement, the Agent shall calculate all fees and interest, including without limitation standby fees and agency fees. For greater certainty all such calculations shall be without duplication of any day such that neither interest nor fees shall be calculated in respect of the same day twice.

(e) Notwithstanding anything herein to the contrary, in no event shall any interest rate or rates referred to herein (together with other fees payable hereunder which are construed by a court of competent jurisdiction to be interest or in the nature of interest) exceed the maximum interest rate permitted by Applicable Law. If such maximum interest rate would be exceeded by the terms hereof, the rates of interest payable hereunder shall be reduced to the extent necessary so that such rates (together with other fees which are construed by a court of competent jurisdiction to be interest or in the nature of interest) equal the maximum interest rate permitted by Applicable Law, and any overpayment of interest received by the Agent or the Lenders theretofore shall be applied, forthwith after determination of such overpayment, to pay all then outstanding interest, and thereafter to pay outstanding principal, as if the same were a prepayment of principal and treated accordingly hereunder.

## **1.9 Determinations By the Borrower**

All provisions contained herein requiring the Borrower to make a determination or assessment of any event or circumstance or other matter to the best of its knowledge shall be deemed to require the Borrower to make all inquiries and investigations as may be reasonable in the circumstances before making any such determination or assessment.

## **1.10 Terms Generally**

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein (including this Agreement) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented, restated or otherwise modified (subject to any restrictions on such amendments, supplements, restatements or modifications set forth herein), (b) any reference herein to any Person shall be

construed to include such Person's successors and permitted assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) unless otherwise expressly stated, all references in this Agreement to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

### **1.11 Acknowledgement Regarding Any Supported QFCs**

(a) To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Hedge Arrangement/Swap or any other agreement or instrument that is a QFC (such support, "**QFC Credit Support**", and each such QFC, a "**Supported QFC**"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the *Federal Deposit Insurance Act* and Title II of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (together with the regulations promulgated thereunder, the "**U.S. Special Resolution Regimes**") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(b) In the event a Covered Entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Credit Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States.

### **1.12 [INTENTIONALLY DELETED]**

### **1.13 Schedules**

The following are the Schedules annexed hereto and incorporated by reference and deemed to be part hereof:

Schedule A	—	Lenders and Commitments
Schedule B	—	<b>[Intentionally Deleted]</b>
Schedule C	—	Repayment Notice
Schedule D	—	Compliance Certificate

Schedule E	–	Guarantors/Obligors on Second Closing Date
Schedule F	–	Assignment and Assumption
Schedule G	–	Loan Pricing Corporation Information
Schedule 9.1(i)	–	Litigation
Schedule 9.1(l)	–	Description of Real Property
Schedule 9.1(m)	–	Insurance Policies
Schedule 9.1(n)	–	Labour Relations
Schedule 9.1(q)	–	Corporate Structure
Schedule 9.1(r)	–	Relevant Jurisdictions
Schedule 9.1(s)	–	Intellectual Property
Schedule 9.1(t)	–	Material Contracts and Material Licences
Schedule 9.1(aa)	–	Non-Arm's Length Transactions
Schedule 9.1(mm)	–	Residual Equity on Second Closing Date
Exhibit I	–	Lines

## ARTICLE 2

### THE CREDIT FACILITY

#### **2.1 Credit Facility**

Subject to the terms and conditions of this Agreement, on the Closing Date the Lenders established in favour of the Borrower the Credit Facility in an aggregate amount of \$15,000,000, \$7,500,000 was advanced to the Borrower on the Initial Drawdown Date and the remaining \$7,500,000 of which was advanced to the Borrower on the Second Drawdown Date. As of the Second Closing Date, principal and accrued interest in the amount of \$15,400,536 (the **"Second Closing Date Outstanding Amount"**) remains due and owing in respect of the Credit Facility and no further advances under the Credit Facility are available.

#### **2.2 Purpose of Credit Facility**

The advances under the Credit Facility were used to repay outstanding advances pursuant to the Senior Revolving B Facility and then to finance expansion related Capital Expenditures and start up costs at the US Facility.

#### **2.3 Nature of the Credit Facility**

The Credit Facility is a non-revolving facility and, accordingly, no amounts repaid under the Credit Facility may be reborrowed and the limits of the Credit Facility (and the

Proportionate Share of the Lenders' Commitments under the Credit Facility) will be automatically and permanently reduced by the amount of any such repayment so made.

### ARTICLE 3

#### **DISBURSEMENT CONDITIONS**

##### **3.1 Conditions Precedent to Effectiveness of Agreement on Closing Date**

The obligations of the Lenders under the Original Credit Agreement were subject to and conditional upon the following conditions precedent being satisfied:

- (a) this Agreement shall have been executed and delivered by all parties hereto;
- (b) duly executed copies of the Security shall have been delivered to the Agent and such financing statements or other registrations of such Security, or notice thereof, shall have been filed, registered, entered or recorded in all offices of public record necessary or desirable in the opinion of the Agent to preserve or protect the charges and security interests created thereby;
- (c) the Agent shall have received timely notice as required under Section 2.4 of the Original Credit Agreement;
- (d) the Agent shall have received certified copies of the Organizational Documents of each Obligor, the resolutions authorizing the execution, delivery and performance of each Obligor's respective obligations under the Loan Documents and the transactions contemplated herein, and the incumbency of the officers and directors of the Obligors;
- (e) copies of all other shareholder agreements and partnership agreements, if any, applicable to each Obligor, certified by such Obligor to be true, shall have been delivered to the Agent;
- (f) a currently dated letter of opinion of the Borrower's Counsel along with the opinions of local counsel satisfactory to Lenders' Counsel shall have been delivered to the Agent;
- (g) certificates of status or good standing, as applicable, for each Obligor's jurisdiction of existence shall have been delivered to the Agent;
- (h) the Agent shall have received a certified copy of the Senior Documents and an executed copy of the Intercreditor Agreement, which documents shall be in form and substance satisfactory to the Lenders;
- (i) the ownership, capital, corporate, tax, corporate governance, organizational and legal structure of the Obligors shall be satisfactory to the Agent;
- (j) the Lenders' requirements relative to "Anti Money Laundering" policies and "Know Your Client" rules shall have been satisfied with respect to each of the Obligors;

- (k) receipt by and Agent's satisfaction with all Material Contracts and Material Licences and the Obligors shall be in compliance in all material respects with all such Material Contracts and Material Licences;
- (l) receipt of and Agent's satisfaction with 3-year projected financial statements for Borrower, on a consolidated basis, with at least the first two years being on a quarterly basis;
- (m) a Compliance Certificate calculated as of the Closing Date (using EBITDA for the period ending June 30, 2023) shall have been delivered to the Agent confirming that (i) the Borrower has a Total Debt to EBITDA Ratio on a pro forma basis after taking into account the advance on the Closing Date not exceeding 5.75:1.0, and (ii) no Default or Event of Default has occurred and is continuing on the Initial Drawdown Date or would result from making the advance;
- (n) the Agent's satisfaction with the Obligors' insurance coverage and receipt by Agent of certificates of insurance acceptable to the Agent showing, inter alia, the Agent as a loss payee as its interest may appear on all applicable insurance policies of the Obligors;
- (o) arrangements satisfactory to the Agent for repayment in full of all Debt that is not Permitted Debt owing by any Obligor to the existing lenders to such Obligor, concurrent with the initial Drawdown under the Credit Facility;
- (p) releases, discharges and postponements with respect to all Encumbrances which are not Permitted Encumbrances, if any, shall have been delivered to the Agent in form satisfactory to the Agent;
- (q) payment of all amounts and reasonable fees (including reasonable fees of Lenders' Counsel), payable to the Lenders or the Agent, including the upfront fee payable to each Lender equal to 125 bps multiplied by such Lender's Proportionate Share of the Commitments;
- (r) all representations and warranties contained in this Agreement shall be true and correct;
- (s) no Default or Event of Default shall exist;
- (t) no Material Adverse Effect exists; and
- (u) the Agent shall have received such additional and customary documents as the Lenders shall reasonably request to establish the consummation of the transactions contemplated hereby and be satisfied, acting reasonably, as to the taking of all proceedings in connection herewith in compliance with the conditions set forth in this Agreement.

### **3.2 Conditions Precedent to Effectiveness of this Agreement on the Second Closing Date**

The obligations of the Lenders under this Agreement on the Second Closing Date are subject to and conditional upon the following conditions precedent being satisfied:

- (a) this Agreement shall have been executed and delivered by all parties hereto;
- (b) the Agent shall have received certified copies of the Organizational Documents of the Borrower, the resolutions authorizing the execution, delivery and performance of the Borrower's obligations under this Agreement and the transactions contemplated herein, and the incumbency of the officers and directors of the Borrower;
- (c) copies of all other shareholder agreements and partnership agreements, if any, applicable to the Borrower, certified by the Borrower to be true, shall have been delivered to the Agent;
- (d) a currently dated letter of opinion of the Borrower's Counsel satisfactory to Lenders' Counsel shall have been delivered to the Agent;
- (e) certificates of status or good standing, as applicable, for the Borrower's jurisdiction of existence shall have been delivered to the Agent;
- (f) receipt by the Agent of an acknowledgement and confirmation from each guarantor hereunder;
- (g) the Lenders' requirements relative to "Anti Money Laundering" policies and "Know Your Client" rules shall have been satisfied with respect to each of the Obligors;
- (h) the appointment of Alvarez & Marsal as a consultant for the Borrower, such appointment to be in form and substance satisfactory to the Lenders and in which the Lenders will be provided with access to such information and reporting (the engagement and Lenders right to access to be in form agreeable to the Lenders);
- (i) a Compliance Certificate calculated as of the Second Closing Date (using EBITDA for the period ending December 31, 2023) shall have been delivered to the Agent;
- (j) execution and delivery of an amendment and restatement of the Senior Credit Agreement, such agreement to be in form and substance satisfactory to the Agent;
- (k) the Agent's satisfaction with the Obligors' insurance coverage and receipt by Agent of certificates of insurance acceptable to the Agent showing, inter alia, the Agent as a loss payee as its interest may appear on all applicable insurance policies of the Obligors;
- (l) receipt by Holdco of commitments for \$40,000,000 (the "**TQ Debt**") of Debt from its shareholders (for certainty, amounts funded (in the amount of \$15,000,000) prior to the Second Closing Date shall form a portion of the \$40,000,000 commitment required), and a corresponding commitment by Holdco to invest such funds in Shareholder Subordinated Debt to the Borrower, all of which is in form and substance satisfactory to the Lenders;



- (m) execution of the TQ Subordination Agreement, such agreement to be in form and substance satisfactory to the Lenders;
- (n) receipt by the Agent of a certified copy of the TQ Security;
- (o) payment of all amounts and reasonable fees (including reasonable fees of Lenders' Counsel), payable to the Lenders or the Agent, including the fees payable pursuant to any fee letter in favour of the Agent;
- (p) all representations and warranties contained in this Agreement shall be true and correct;
- (q) no Default or Event of Default shall exist;
- (r) no Material Adverse Effect exists; and
- (s) the Agent shall have received such additional and customary documents as the Lenders shall reasonably request to establish the consummation of the transactions contemplated hereby and be satisfied, acting reasonably, as to the taking of all proceedings in connection herewith in compliance with the conditions set forth in this Agreement.

## ARTICLE 4

### EVIDENCE OF DRAWDOWNS

#### 4.1 Account of Record

The Agent shall open and maintain books of account evidencing the advances and all other amounts owing by the Borrower to the Lenders hereunder. The Agent shall enter in the foregoing accounts details of all amounts from time to time owing, paid or repaid by the Borrower hereunder. The information entered in the foregoing accounts shall constitute *prima facie* evidence of the obligations of the Borrower to the Lenders hereunder with respect to the advances and all other amounts owing by the Borrower to the Lenders hereunder. After a request by the Borrower, the Agent shall promptly advise the Borrower of such entries made in the Agent's books of account.

## ARTICLE 5

### PAYMENTS OF INTEREST, PREMIUM AND STANDBY FEES

#### 5.1 Interest

(a) The Borrower shall pay interest on each advance under the Credit Facility in Canadian Dollars at a rate per annum equal to 14% (the "**Interest Rate**"). Subject to Section 5.6, Section 5.7 and Section 5.8, such interest shall be payable monthly in arrears on the fifteenth (15<sup>th</sup>) day of each month (each, an "**Interest Payment Date**") from and including the Drawdown Date of such advance to but excluding the Interest Payment Date and shall be calculated on the principal amount of such advance outstanding during such period and on the basis of the actual number of days elapsed in a year of 365 days or 366 days, as the case may be. Upon receipt by the Agent of the Borrower's written notice (a "**PIK Notice**"), a portion of the

Interest Rate as specified by the Borrower in the PIK Notice (up to a maximum of 5%), shall be capitalized on each subsequent Interest Payment Date commencing with the next following Interest Payment Date that is at least five (5) Business Days after the date such PIK Notice is delivered to the Agent. For certainty, except as provided for in Section 5.8, interest will accrue on all capitalized interest at the Interest Rate.

(b) At the option of the Borrower by written notice to the Agent (a “**PIK Modification Notice**”), the Borrower may elect to modify a PIK Notice by either (x) increasing (subject to a maximum of 5%) the portion of the Interest Rate that is capitalized, or (y) decreasing the portion of the Interest Rate that was being capitalized. Such modification shall apply to each subsequent Interest Payment Date commencing with the next following Interest Payment Date that is at least five (5) Business Days after the date such PIK Modification Notice is delivered to the Agent. The Borrower may provide a PIK Modification Notice only once every two (2) Fiscal Quarters.

## **5.2 Premium**

If the Borrower pays (whether voluntarily or as a consequence of a mandatory requirement to pay) the Credit Facility in whole or in part (and, for certainty to include any acceleration as a consequence of an Event of Default), the Borrower shall pay to the Agent for and on behalf of the Lenders a premium in an amount equal to that set forth below (excluding interest that has been paid-in-kind and capitalized):

<b>Period</b>	<b>Amount of Premium</b>
From the Closing Date to and including the first anniversary of the Closing Date	6% of the repaid portion of the Credit Facility
Following the first anniversary of the Closing Date but prior to and including the second anniversary of the Closing Date	4% of the repaid portion of the Credit Facility
Following the second anniversary of the Closing Date but prior to the third anniversary of the Closing Date	2% of the repaid portion of the Credit Facility
Thereafter	Nil

## **5.3 No Set-Off, Deduction etc.**

Except with respect to Taxes (which are governed by Section 15.2), all payments (whether interest or otherwise) to be made by the Borrower or any other party pursuant to this Agreement are to be made in freely transferable, immediately available funds and without set-off or deduction of any kind whatsoever (whether for deemed re-investment or otherwise) except to the extent required by Applicable Law, and if any such set-off or deduction is so required and is made, the Borrower or any other party will, as a separate and independent obligation to each Lender, be obligated to immediately pay to each Lender all such additional amounts as may be required to fully indemnify and save harmless such Lender from such set-off or deduction and will result in the effective receipt by such Lender of all the amounts otherwise payable to it in accordance with the terms of this Agreement.

#### **5.4 Default Interest**

Upon the occurrence of, and during the continuance of, an Event of Default, the Interest Rate shall, on written notice by the Agent to the Borrower, be increased by an additional 2.00% per annum. Unless agreed to by the Senior Lenders, such amounts shall be capitalized (as opposed to paid in cash) and compounded monthly on the last day of each month. For certainty, interest will accrue on any capitalized interest at the Interest Rate.

#### **5.5 Fee Letters**

(a) The Borrower shall pay to the Agent such fees in such amounts, and on the terms and conditions, set out in any fee letter between the Borrower and the Agent, as such letter may be amended, supplemented or replaced from time to time, or as otherwise agreed to in writing from time to time by the Agent (or any of its Affiliates) and the Borrower. For greater certainty, each such fee letter and all such written arrangements between the Agent and the Borrower relating to the payment of fees in respect to this Agreement shall constitute Loan Documents, shall survive the execution of this Agreement and shall in all respects remain operative and binding on the Borrower.

(b) In consideration of the Lenders making available the Credit Facility, the Borrower shall pay to the Agent (on behalf of the Lenders) fees in such amount as set out in any fee letter between the Agent and the Borrower. Such fees shall be non-refundable and shall be deemed to be fully earned when paid.

#### **5.6 Overdue Principal and Interest**

(a) If all or part of the Credit Facility shall not be paid when due (whether at its stated maturity, by acceleration or otherwise), such overdue amount shall bear interest (as well after as before judgment), payable on demand, at a rate per annum equal to 16% per annum from the date of such non-payment until paid in full.

(b) If all or part of any interest in respect of the Credit Facility shall not be paid when due (whether at its stated maturity, by acceleration or otherwise), such overdue interest shall, to the extent permitted by law, bear interest (as well after as before judgment), payable on demand, at a rate per annum equal to 16% per annum from the date of such non-payment until paid in full.

#### **5.7 Interest on Other Amounts**

If any amount owed by the Borrower to the Agent or any Lender under any of the Loan Documents is not paid when due and payable, and there is no other provision in any Loan Document specifying the interest payable on such overdue amount, such overdue amount shall bear interest (as well after as before judgment), payable on demand at a rate per annum equal to (a) in the case of interest charged on the Subordinated PIK Amount pursuant to Section 5.8(c), 22%, or (b) in all other cases, 16%, in each case, from the date of non-payment until paid in full.

#### **5.8 Accrual of Interest – Subordinated PIK Amount**

Subject to Section 5.7 but notwithstanding anything contained herein to the contrary:

- (a) From the Second Closing Date until March 11, 2025 (the “**Subordinated PIK Period**”) all interest payable with respect to the Second Closing Date Outstanding Amount shall accrue at the Interest Rate and shall be paid in kind and capitalized with the aggregate amount of such interest being referred to herein as the “**Subordinated PIK Amount**”. Interest will not accrue on the Subordinated PIK Amount following March 11, 2025, except as provided for in Section 5.8(c).
- (b) Following the expiration of the Subordinated PIK Period, all interest payable with respect to the Second Closing Date Outstanding Amount shall continue to accrue at the Interest Rate and be paid in kind, provided that the Borrower may, by written notice to the Agent and with the consent of the Senior Lenders, request that a portion of the Interest Rate equal to 9% per annum shall be payable in cash on each Interest Payment Date with the remaining 5% per annum portion of the Interest Rate paid in kind and capitalized. For certainty, interest will accrue on interest that is capitalized on the Second Closing Date Outstanding Amount following the expiration of the Subordinated PIK Period.
- (c) The Subordinated PIK Amount shall become immediately due and payable on the Maturity Date, provided that the Borrower may, by written notice to the Agent not less than 30 days prior to the Maturity Date, request that the repayment date for the Subordinated PIK Amount be extended until December 15, 2028, in which case interest payable with respect to the Subordinated PIK Amount after the Maturity Date shall accrue at a rate per annum equal to 20% and shall be paid in kind and capitalized (and, for certainty, interest shall accrue on such capitalized interest) and such capitalized interest shall also be due and payable on December 15, 2028.

## 5.9 Premium Payment

(a) The Borrower shall, within five Business Days of the Premium Payment Trigger Date, make a cash payment (the “**Premium Payment**”) to Roynat in an amount equal to the Premium Payment Amount. Subject to Section 5.9(b), the Borrower will provide written notice of the Premium Payment Amount within five Business Days following the Premium Payment Trigger Date (the “**Premium Payment Notice**”), which Premium Payment Notice shall include (x) a detailed calculation of the Premium Payment Amount (including the underlying Fair Market Value of the Residual Equity, if applicable) and (y) copies of all supporting materials of Borrower and Holdco prepared and used in the calculation of the Premium Payment Amount.

(b) In connection with a Premium Payment Trigger Date identified in part (ii) of the definition thereof:

- (i) Roynat shall have a period of 20 Business Days (the “**Review Period**”) following the receipt of the Premium Payment Notice in which to review the same, and if required, to consult with the duly appointed auditors of the Borrower and Holdco. If Roynat has any objection to any part of the Premium Payment Notice, Roynat shall set out the same in writing with reasonable particularity in a notice (the “**Objection Notice**”) to be delivered to the Borrower on or prior to the expiration of the Review Period.

- (ii) If no such Objection Notice is received by the Borrower, then Roynat shall be deemed to have accepted the calculation of the Premium Payment Amount set forth in the Premium Payment Notice.
- (iii) In the event that an Objection Notice is delivered to the Borrower, the Borrower and the Agent shall endeavor to agree upon the Premium Payment Amount. If the Borrower and the Agent are unable to agree within 30 days following the date on which the Objection Notice is delivered to the Borrower, then the Borrower and Agent shall, by mutual agreement, promptly select a firm of certified public accountants carrying on business in Canada (the “**Valuator**”) to resolve each disagreement set forth in the Objection Notice and to determine the Premium Payment Amount. If agreement cannot be reached as to such firm to act as the Valuator within 40 days following the receipt of the Objection Notice by the Borrower, the Valuator shall be another major accounting firm which acts at arm’s length to the Borrower. The following firms (or their successors) will be approached to accept this engagement in the following order (with the first name mentioned being the first firm that will be approached):
  - (A) PricewaterhouseCoopers
  - (B) KPMG LLP
  - (C) Ernst & Young LLP
  - (D) BDO Dunwoody
  - (E) Grant Thornton

The cost of the Valuator shall be paid 50% by the Borrower with the remaining 50% to be paid by Roynat (to be netted off and paid out of the Premium Payment Amount to the fullest extent possible). The determination of the Valuator with respect to each matter in dispute as set forth in the Objection Notice pursuant to this Section 5.9(b) shall be given to the Borrower and Roynat as soon as possible and shall be final and binding on Roynat and the Borrower, save and except for clerical errors or omissions and fraud.

- (iv) In the event that an Objection Notice is delivered by the Agent, the requirement to make the Premium Payment shall be delayed until the date that is three Business Days after the Premium Payment Amount has been agreed or otherwise determined pursuant to this Section 5.9(b).

(c) In the event that (i) the Borrower is not permitted to make the Premium Payment pursuant to the provisions of the Senior Credit Agreement or (ii) otherwise does not make the Premium Payment on the date due, then the Premium Payment shall remain outstanding, be immediately due and payable and accrue interest at a rate of 14% per annum, calculated daily and compounded monthly, commencing from and including the date the Premium Payment was due, and to but excluding the date the Premium Payment and all accrued interest thereon is

paid in full. In the event the Premium Payment is not made as a result of clause (i) above, then such non-payment shall not constitute an Event of Default.

(d) In the event that the Premium Payment Amount is determined to be nil as of the Premium Payment Trigger Date, then no amount shall be payable to Roynat and the Borrower shall have no further obligations in respect of the Premium Payment.

(e) In the event that a portion of the consideration to be paid to or for the benefit of holders of Residual Equity in connection with a Payment Trigger consists of any contingent payments (such as earn-outs) then the Borrower shall cause the holders of the Residual Equity (or TorQuest as their representative) to enter into a side-agreement (the “**Side Agreement**”) with Roynat pursuant to which 3.5% of any amount otherwise payable to or for the benefit of holders of the Residual Equity in respect of such contingent payments shall be paid to Roynat.

## ARTICLE 6

### [INTENTIONALLY DELETED]

## ARTICLE 7

### REPAYMENT

#### **7.1 Mandatory Repayment of Principal**

Subject to the terms hereof (including, without limitation, Section 5.8(c), the Borrower shall repay all Obligations that it owes in connection with the Credit Facility, including the outstanding principal amount of all advances thereunder together with all accrued interest, fees and other amounts then unpaid by it in full on the Maturity Date, and the Credit Facility and the Commitments thereunder shall be automatically terminated on the Maturity Date.

#### **7.2 Voluntary Repayments**

Subject to the Agent receiving a Repayment Notice which shall be given not less than three (3) Business Days prior to the proposed repayment date and which shall be irrevocable, the Borrower may from time to time repay any portion of the Credit Facility provided that each such repayment shall be in a minimum aggregate amount of \$500,000 and in whole multiples of \$100,000.

#### **7.3 Mandatory Repayments from Additional Debt**

(a) If the Borrower or any of its Subsidiaries incurs Debt other than Permitted Debt, the Net Proceeds thereof shall be paid by the Borrower (irrespective of whether a Subsidiary incurred such Debt) to the Agent no later than two (2) Business Days following the incurrence of such Debt and shall be applied in permanent repayment of outstanding Obligations under the Credit Facility.

(b) Notwithstanding the foregoing, the parties hereto acknowledge and agree that the Borrower shall not be required to make any mandatory repayment pursuant to this Section 7.3 in respect of any such additional Debt incurred if (i) the Net Proceeds of such additional Debt have been used to repay the Senior Debt, in whole or in part, or (ii) in the event that no Event of Default has occurred and is continuing, the requirement for the Borrower or any

other Obligor under the Senior Credit Agreement to effect such mandatory prepayment under the terms of the Senior Credit Agreement does not apply or has been waived by the Senior Lenders in accordance with the provisions of the Senior Credit Agreement. For greater certainty, in the event that only a portion of the Net Proceeds of any such additional Debt has been used to repay the Senior Debt and as a result of such payment no amounts owed under the Senior Debt remain outstanding, then the balance of such Net Proceeds shall be paid by the Borrower to the Agent in accordance with the terms hereof and shall be applied in permanent repayment of outstanding Obligations.

#### **7.4 Mandatory Repayments from Issuances of Equity Interests**

(a) If the Borrower issues Equity Interests (other than Excluded Issuances), the Net Proceeds thereof shall be paid by the Borrower to the Agent no later than two (2) Business Days following the issuance of such Equity Interests and shall be applied in permanent repayment of outstanding Obligations under the Credit Facility.

(b) Notwithstanding the foregoing, the parties hereto acknowledge and agree that the Borrower shall not be required to make a mandatory repayment pursuant to this Section 7.4 in respect of any issuance of such Equity Interests if (i) the Net Proceeds of such issuance have been used to repay the Senior Debt, in whole or in part, or (ii) in the event that no Event of Default has occurred and is continuing, the requirement for the Borrower or any other Obligor under the Senior Credit Agreement to effect such mandatory prepayment under the terms of the Senior Credit Agreement does not apply or has been waived by the Senior Lenders in accordance with the provisions of the Senior Credit Agreement. For greater certainty, in the event that only a portion of the Net Proceeds of any such issuance has been used to repay the Senior Debt and as a result of such repayment no amounts owed under the Senior Debt remain outstanding, then the balance of such Net Proceeds shall be paid by the Borrower to the Agent in accordance with the terms hereof and shall be applied in permanent repayment of outstanding Obligations.

#### **7.5 Mandatory Repayment on Dispositions**

(a) If any Obligor makes Dispositions pursuant to clause (d) of the Permitted Dispositions definition or with the consent of the Majority Lenders, resulting in Net Proceeds in excess of \$2,000,000 in the aggregate in any given Fiscal Year, an amount equal to such excess shall be paid by the Borrower (irrespective as to which Obligor made the Disposition) to the Agent within five (5) Business Days after the closing of the transaction under which such Disposition occurs; provided that, the Obligors may, if no Default or Event of Default exists, elect to retain such Net Proceeds provided that an Obligor reinvests such Net Proceeds in additional assets of an Obligor within one-hundred and eighty (180) days after the closing of the transaction under which such Disposition occurs. If following the one-hundred and eighty (180) day period or upon the occurrence of an Event of Default no Obligor has reinvested such excess Net Proceeds in additional assets, such proceeds shall immediately be paid by the Borrower to the Agent (irrespective as to which Obligor received the Net Proceeds). Any proceeds so paid to the Agent shall be applied in permanent repayment of outstanding Obligations under the Credit Facility.

(b) Notwithstanding the foregoing, the parties hereto acknowledge and agree that the Borrower shall not be required to make a mandatory repayment pursuant to this Section 7.5 in respect of any such Disposition if (i) the Net Proceeds of such Disposition have been used to repay the Senior Debt, in whole or in part, or (ii) in the event that no Event of Default has

occurred and is continuing, the requirement for the Borrower or any other Obligor under the Senior Credit Agreement to effect such mandatory prepayment under the terms of the Senior Credit Agreement does not apply or has been waived by the Senior Lenders in accordance with the provisions of the Senior Credit Agreement. For greater certainty, in the event that only a portion of the Net Proceeds of any such Disposition has been used to repay the Senior Debt and as a result of such repayment no amounts owed under the Senior Debt remain outstanding, then the balance of such Net Proceeds shall be paid by the Borrower to the Agent in accordance with the terms hereof and shall be applied in permanent repayment of outstanding Obligations.

## **7.6 Mandatory Repayments from Proceeds of Insurance**

(a) Subject to there being no existing Default or Event of Default, the Obligors may receive and retain Net Proceeds of property insurance in an amount up to \$2,000,000 in the aggregate in any Fiscal Year.

(b) If the Obligors receive Net Proceeds of property insurance in an amount greater than \$2,000,000 in the aggregate in any Fiscal Year, an amount equal to such excess proceeds of such insurance shall be paid by the Borrower (irrespective as to which Obligor received such proceeds) to the Agent, within two (2) Business Days after the receipt of such proceeds by an Obligor and shall be applied in permanent repayment of outstanding Obligations under the Credit Facility; provided that an Obligor may apply such excess proceeds if no Default or Event of Default exists to replace, repair or rebuild the asset to which such proceeds relate, within one-hundred and eighty (180) days following receipt thereof. If following such one-hundred and eighty (180) day period no Obligor has replaced, repaired or rebuilt the asset, such excess proceeds shall immediately be applied by the Agent against the Obligations under the Credit Facility.

(c) Notwithstanding the foregoing, the parties hereto acknowledge and agree that the Borrower shall not be required to make a mandatory repayment pursuant to this Section 7.6 in respect of proceeds of any property insurance if (i) the Net Proceeds of such property insurance have been used to repay the Senior Debt, in whole or in part, or (ii) in the event that no Event of Default has occurred and is continuing, the requirement for the Borrower or any other Obligor under the Senior Credit Agreement to effect such mandatory prepayment under the terms of the Senior Credit Agreement does not apply or has been waived by the Senior Lenders in accordance with the provisions of the Senior Credit Agreement. For greater certainty, in the event that only a portion of the Net Proceeds of any such property insurance has been used to repay the Senior Debt and as a result of such repayment no amounts owed under the Senior Debt remain outstanding, then the balance of such Net Proceeds shall be paid by the Borrower to the Agent in accordance with the terms hereof and shall be applied in permanent repayment of outstanding Obligations.

(d) No Obligor shall be entitled to any proceeds of insurance if there exists an Event of Default and forthwith upon the occurrence of an Event of Default all unapplied proceeds of property insurance shall, upon notice being given to the Agent, be remitted to the Agent for application against amounts outstanding hereunder.



**7.7 [Intentionally Deleted]****7.8 Mandatory Repayment - Contract Break Fees**

(a) If the Borrower receives any payment as a consequence of the counterparty breaking the [REDACTED] Contract, the [REDACTED] Contract, the [REDACTED] Contract or the [REDACTED] Contract, such amount received shall be applied by the Borrower as a permanent repayment of the Credit Facility.

(b) Notwithstanding the foregoing, the parties hereto acknowledge and agree that the Borrower shall not be required to make a mandatory repayment pursuant to this Section 7.8 in respect of proceeds of any payment as a consequence of the counterparty breaking the [REDACTED] Contract or the [REDACTED] Contract if (i) the net proceeds of such payment have been used to repay the Senior Debt, in whole or in part, or (ii) in the event that no Event of Default has occurred and is continuing, the requirement for the Borrower or any other Obligor under the Senior Credit Agreement to effect such mandatory prepayment under the terms of the Senior Credit Agreement does not apply or has been waived by the Senior Lenders in accordance with the provisions of the Senior Credit Agreement. For greater certainty, in the event that only a portion of the net proceeds of any payment as a consequence of the counterparty breaking the [REDACTED] Contract or the [REDACTED] Contract has been used to repay the Senior Debt and as a result of such repayment no amounts owed under the Senior Debt remain outstanding, then the balance of such net proceeds shall be paid by the Borrower to the Agent in accordance with the terms hereof and shall be applied in permanent repayment of outstanding Obligations.

**ARTICLE 8****PLACE AND APPLICATION OF PAYMENTS****8.1 Place of Payment of Principal, Interest and Fees**

(a) All payments by the Borrower under any Loan Document, unless otherwise expressly provided in such Loan Document, shall be made to the Agent pursuant to the Agent's Wire Details, or at such other location as may be agreed upon by the Agent and the Borrower, for the account of the Lenders entitled to such payment, not later than 12:00 noon (Toronto time) for value on the date when due, and shall be made in immediately available funds without set-off or counterclaim.

(b) Unless the Agent shall have been notified by the Borrower not later than 12:00 noon (Toronto time) of the Business Day prior to the date on which any payment to be made by the Borrower under a Loan Document is due that the Borrower does not intend to remit such payment, the Agent shall be entitled to assume that the Borrower has remitted or will remit such payment when so due and the Agent may (but shall not be obliged to), in reliance upon such assumption, make available to each applicable Lender on such payment date such Lender's share of such assumed payment. If the Borrower does not in fact remit such payment to the Agent as required by such Loan Document, each applicable Lender shall immediately repay to the Agent on demand the amount so made available to such Lender, together with interest on such amount at the Interbank Reference Rate, in respect of each day from and including the date such amount was made available by the Agent to such Lender to the date such amount is repaid in immediately available funds to the Agent, and the Borrower shall immediately pay to the Agent on demand such amounts as are sufficient to compensate the Agent and the Lenders for all costs and expenses (including, without limitation, any interest paid

to lenders of funds without duplication of interest otherwise paid hereunder) which the Agent may sustain in making any such amounts available to the Lenders or which any Lender may sustain in receiving any such amount from, and in repaying any such amount to, the Agent or in compensating the Agent as aforesaid. A certificate of the Agent as to any amounts payable by the Borrower pursuant to the preceding sentence and containing reasonable details of the calculation of such amounts shall be *prima facie* evidence of the amounts so payable.

(c) If any amount which has been received by the Agent not later than 12:00 noon (Toronto time) on any Business Day as provided above is not paid by the Agent to a Lender on such Business Day as required under this Agreement, the Agent shall immediately pay to such Lender on demand interest on such amount at the Interbank Reference Rate in respect of each day from and including the day such amount was required to be paid by the Agent to such Lender to the day such amount is so paid.

## **8.2 Netting of Payments**

If, on any date, amounts would be due and payable under this Agreement in the same currency by the Borrower to the Lenders, or any one of them, and by the Lenders, or such Lender, to the Borrower, then, on such date, upon notice from the Agent or such Lender stating that netting is to apply to such payments, the obligations of each such party to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by the Borrower to the Lenders, or such Lender, exceeds the aggregate amount that would otherwise have been payable by the Lenders, or such Lender, to the Borrower or *vice versa*, such obligations shall be replaced by an obligation upon whichever of the Borrower or the Lenders, or such Lender, would have had to pay the larger aggregate amount to pay to the other the excess of the larger aggregate amount over the smaller aggregate amount. For greater certainty, prior to acceleration of repayment pursuant to Section 12.2, this Section 8.2 shall not permit any Lender to exercise a right of set-off, combination or similar right against any amount which the Borrower may have on deposit with such Lender in respect of any amount to which netting is to apply pursuant to this Section 8.2, but shall apply only to determine the net amount to be payable by the Lenders or one of them to the Borrower, or by the Borrower to the Lenders or one of them pursuant to the Loan Documents.

# **ARTICLE 9**

## **REPRESENTATIONS AND WARRANTIES**

### **9.1 Representations and Warranties**

The Borrower represents and warrants to the Agent and to each of the Lenders and acknowledges and confirms that the Agent and each of the Lenders are relying upon such representations and warranties:

- (a) Existence and Qualification Each Obligor (a) has been duly incorporated, established, formed, amalgamated, merged or continued, as the case may be, and is validly subsisting and in good standing as a corporation, company, limited partnership or partnership, under the laws of its jurisdiction of formation, amalgamation, merger or continuance, as the case may be (or in the case of Obligors which are not corporations or companies, has been duly created or established as a partnership or other applicable entity and validly exists under

and is in good standing under the laws of the jurisdiction in which it has been created or established), where the failure by any Obligor, individually or together with one or more Obligors, to be in good standing could reasonably be expected to have a Material Adverse Effect, (b) is duly qualified to carry on its business in each jurisdiction in which it carries on business except where the failure by it, individually or together with one or more other Obligors, to be so qualified would not adversely affect its business in any material respect, and (c) has all required Material Licences.

- (b) Power and Authority Each Obligor has the corporate, company or partnership power and authority, as the case may be, (a) to enter into, and to exercise its rights and perform its obligations under, the Loan Documents to which it is a party and all other instruments and agreements delivered by it pursuant to any of the Loan Documents, and (b) to own its Property and carry on its business as currently conducted and as currently proposed to be conducted by it.
- (c) Execution, Delivery, Performance and Enforceability of Documents The execution, delivery and performance of each of the Loan Documents to which any Obligor is a party, and every other instrument or agreement delivered by an Obligor pursuant to any Loan Document, has been duly authorized by all corporate, company or partnership actions required, and each of such documents has been duly executed and delivered by it. Each Loan Document to which any Obligor is a party constitutes the legal, valid and binding obligations of such Obligor, enforceable against such Obligor in accordance with their respective terms (except, in any case, as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and by principles of equity).
- (d) Loan Documents Comply with Applicable Laws, Organizational Documents and Contractual Obligations None of the execution or delivery of, the consummation of the transactions contemplated in, or the compliance with the terms, conditions and provisions of any of, the Loan Documents conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under or contravention of, any Requirement of Law in any material respect, any Obligor's Organizational Documents or any Material Contract or Material Licence, or results or will result in the creation or imposition of any Encumbrance upon any of its Property except for Permitted Encumbrances.
- (e) Consent Respecting Loan Documents Each Obligor has obtained, made or taken all consents, approvals, authorizations, declarations, registrations, filings, notices and other actions whatsoever required (including from any Governmental Authority), (except for registrations or filings which may be required in respect of the Security Documents) to enable it to execute and deliver each of the Loan Documents to which it is a party and to consummate the transactions contemplated in the Loan Documents.
- (f) Approvals, Licenses and Authorizations The Obligors have all licenses, permits, concessions, certificates, registrations, franchises and other authorizations and approvals of all Governmental Authorities that are material and required or necessary for the Obligors to carry on the Business in all material respects. Each Material Licence is valid, subsisting and in good standing and the Obligors

are not in default or breach (except for immaterial breaches that do not allow for a right of termination of such licence) of any Material Licence and, to the knowledge of the Obligor, no proceeding is pending or has been threatened in writing by the applicable Government Authority to revoke or limit any Material Licence.

- (g) Taxes Each Obligor has duly and timely filed all tax returns required to be filed by it and has paid or made adequate provision for the payment of all Taxes levied on its Property or income which are showing therein as due and payable, including interest and penalties, or has accrued such amounts in its financial statements for the payment of such Taxes except for Taxes which are not material in amount or which are not delinquent or if delinquent are being contested, and, except, after the date of this Agreement, as is disclosed to the Agent in writing there is no material action, suit, proceeding, investigation, audit or claim now pending, or to its knowledge, threatened by any Governmental Authority regarding any Taxes.
- (h) Judgments, Etc. As of the Second Closing Date, no Obligor is subject to any material judgment, order, writ, injunction, decree or award or any restriction, rule or regulation which has not been stayed.
- (i) Absence of Litigation As of the Second Closing Date, there are no actions, suits or proceedings pending or judgments existing or, to the best of its knowledge and belief, threatened against or affecting any Obligor or its properties which could reasonably be expected to be determined adversely to any Obligor and, if so determined, to result in a Material Adverse Effect. All actions, suits or proceeds pending or judgments existing as of the Second Closing Date that could reasonably be expected to result in a potential liability in excess of \$1,000,000 are set forth in Schedule 9.1(i) attached hereto.
- (j) Title to Assets Each Obligor has good title to its assets, free and clear of all Encumbrances except Permitted Encumbrances and as of the Second Closing Date no Person has any agreement or right to acquire an interest in such assets other than in the ordinary course of its business and pursuant to a Permitted Disposition.
- (k) Use of Real Property All real property owned or leased by each Obligor may be used in all material respects by such Obligor pursuant to Applicable Law for the present use and operation of the business conducted on such real property by such Obligor. All leased real property (other than leases between Obligors) where the lessor is Non-Arm's Length are on market terms and conditions and, in such case, is on terms which are commercially reasonable.
- (l) Description of Real Property Schedule 9.1(l) contains a description as of the Second Closing Date of (a) all real property owned by each Obligor (including municipal addresses, legal description (to the extent available), the name of the Obligor that owns such property and a brief description of such property and its use), and (b) all real property leased by each Obligor (including municipal addresses, legal description (to the extent available), the name of the Obligor that leases such property, the name of the landlord, the term and any renewal

rights under the applicable lease and a brief description of such property and its use).

- (m) Insurance Each Obligor or the Borrower on behalf of itself and all other Obligors maintains insurance which is in full force and effect that complies with all of the requirements of this Agreement. Schedule 9.1(m) lists all existing insurance policies maintained by the Obligors as of the Second Closing Date.
- (n) Labour Relations As of the Second Closing Date: (i) except as set out in Schedule 9.1(n), no Obligor is aware that it is engaged in any unfair labour practice; and there is no unfair labour practice complaint or complaint of employment discrimination pending against any Obligor or to the knowledge of any Obligor threatened against any Obligor, before any Governmental Authority; (ii) no material grievance or arbitration arising out of or under any collective bargaining agreement is pending against any Obligor or to the knowledge of any Obligor threatened against any Obligor; and (iii) no strike, labour dispute, slowdown or material work stoppage is pending against any Obligor or to the knowledge of any Obligor threatened against any Obligor.
- (o) Compliance with Laws No Obligor is in default under any Applicable Law or any Applicable Order in any material respect.
- (p) No Default or Event of Default No Default or Event of Default has occurred which is continuing which is known to the Borrower and which has not been disclosed to the Agent.
- (q) Corporate Structure The corporate structure of the Holdco and its Subsidiaries is, as at the Second Closing Date, as set out in Schedule 9.1(q), which Schedule contains:
  - (i) *Shareholdings of Obligors.* Holdco and its Subsidiaries are as provided for in Schedule 9.1(q) and, except as set forth in Schedule 9.1(q), such Obligors do not own or hold any shares in the capital of, or any other ownership interest in any other Person.
  - (ii) *Share Capital of Obligors.* The authorized capital of the Borrower and its Subsidiaries will be as provided for in Schedule 9.1(q), of which the number of issued and outstanding shares and the beneficial owners thereof at such time is provided for in Schedule 9.1(q).
  - (iii) *Rights to Acquire Shares of Obligors.* No Person will have an agreement or option or any other right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement or option, including convertible securities, warrants or convertible obligations of any nature, for the purchase, subscription, allotment or issuance of any unissued shares in the capital of any Obligor except as provided for in Schedule 9.1(q).
- (r) Relevant Jurisdictions Schedule 9.1(r) identifies in respect of each Obligor as of the Second Closing Date, the Relevant Jurisdictions including the full address (including postal code) of such Obligor's chief executive office, registered office

and all places of business and, if different, the address at which the books and records of such Obligor are located, the address at which senior management of such Obligor are located and conduct their deliberations and make their decisions with respect to the business of such Obligor and the address from which the invoices and accounts of such Obligor are issued.

- (s) Intellectual Property Each Obligor has rights sufficient for it to use all the Intellectual Property reasonably necessary for the conduct of its business. All material patents, trade-marks, copyrights or industrial designs which have been either registered or in respect of which a registration application has been filed by it, as at the Second Closing Date, are listed on Schedule 9.1(s). No Obligor has received any notice of any claim of infringement or similar claim or proceeding relating to any of its Intellectual Property which, if determined against such Obligor, could reasonably be expected to have a Material Adverse Effect.
- (t) Material Contracts:
  - (i) Schedule 9.1(t), accurately sets out, as of the Second Closing Date, all Material Contracts and Material Licences;
  - (ii) a true and complete copy of each Material Contract and Material Licence existing at the date hereof has been delivered to the Agent and each Material Contract and Material Licence is in full force and effect and no notice of intent to terminate or, if applicable, not to renew has been received with respect to any Material Contract or Material Licence; and
  - (iii) each Material Contract to which an Obligor is a party is binding upon such Obligor and, to its knowledge, is a binding agreement of each other Person who is a party to the Material Contract.
- (u) Financial Year End Its financial year end is on June 30.
- (v) Financial Information All of the quarterly and annual financial statements which have been furnished to the Agent and the Lenders, or any of them, in connection with this Agreement are complete in all material respects and such financial statements fairly present in all material respects the results of operations and financial position of the Borrower as of the dates referred to therein and have been prepared in accordance with GAAP (except that such quarterly financial statements do not include notes and the year-end adjustments that are reflected in the corresponding accountant-reviewed or audited, as the case may be, annual financial statements). All other material financial information (including, without limitation, budgets, projections, and EBITDA calculations but excluding information of a general economic or industry-specific nature) provided to the Agent and the Lenders by or on behalf of the Borrower have been prepared in good faith and are based on assumptions and expectations that the Borrower believed to be reasonable at the time so prepared.
- (w) No Material Adverse Effect Since the date of the Borrower's most recent annual audited financial statements provided to the Lenders pursuant to this Agreement, there has been no condition (financial or otherwise), event or change in its business, liabilities, operations, results of operations or assets which constitutes

or has, or could reasonably be expected to constitute, or cause, a Material Adverse Effect.

- (x) Environmental (a) As of the Second Closing Date, no Obligor is subject to any civil or criminal proceeding or investigation relating to Requirements of Environmental Law and no Obligor is aware of any threatened proceeding or investigation involving any Obligor relating to Requirements of Environmental Laws which could reasonably be expected to result in Environmental Liabilities in excess of \$1,000,000; (b) each Obligor has all permits, licences, registrations and other authorizations required by the Requirements of Environmental Laws for the operation of its business and the properties which it owns, leases or otherwise occupies except for those permits, licences, registrations and other authorizations which are not material; (c) each Obligor operates its business and its properties (whether owned, leased or otherwise occupied) in compliance with all applicable Requirements of Environmental Laws (other than immaterial non-compliance); (d) to the knowledge of the Borrower, as of the Second Closing Date, none of the Obligors has caused or permitted a release of Hazardous Materials at, on or under any property owned or leased by the Borrower or any of its Subsidiaries, except for any release that would not reasonably be expected to give rise to any material Environmental Liability or relating to underground storage tanks having been located on the real property on which the Obligors operations are situated; and (e) to the knowledge of the Borrower as of the Second Closing Date, no real property or groundwater in, on or under any property owned or leased by any Obligor is contaminated by any Hazardous Material except for any contamination that would not reasonably be expected to give rise to any material Environmental Liability or any contamination relating to underground storage tanks having been located on the real property on which the Obligors operations are situated.
- (y) Canadian Welfare and Pension Plans Each Obligor has adopted all Canadian Welfare Plans required by Applicable Laws and each of such plans has been maintained and each Obligor is in compliance with such laws in all material respects including, without limitation, all requirements relating to employee participation, funding, investment of funds, benefits and transactions with the Obligors and persons related to them. No Obligor has a material contingent liability with respect to any post-retirement benefit under a Canadian Welfare Plan. With respect to Canadian Pension Plans: (a) no steps have been taken to terminate any Canadian Pension Plan (wholly or in part) which could result in any Obligor being required to make a material additional contribution to any Canadian Pension Plan; (b) no contribution failure has occurred with respect to any Canadian Pension Plan sufficient to give rise to a lien or charge under any applicable pension benefits laws of any other jurisdiction (for certainty, not including payments in respect of contributions payable but not yet due); and (c) no condition exists and no event or transaction has occurred with respect to any Canadian Pension Plan which is reasonably likely to result in any Obligor incurring any material liability, fine or penalty. Each Canadian Pension Plan is in compliance (other than immaterial non-compliance) with all applicable pension benefits and tax laws; (i) all contributions (other than immaterial amounts) (including employee contributions made by authorized payroll deductions or other withholdings) required to be made to the appropriate funding agency in accordance with all Applicable Laws (other than immaterial non-compliance) and

the terms of each pension plan have been made in accordance with all Applicable Laws (other than immaterial non-compliance) and the terms of each Canadian Pension Plan (other than immaterial non-compliance); (ii) all liabilities under each Canadian Pension Plan are funded in accordance with the terms of the respective Canadian Pension Plans, the requirements of applicable pension benefits laws and of applicable regulatory authorities (other than immaterial non-compliance) and (iii) no event has occurred and no conditions exist with respect to any Canadian Pension Plan that has resulted or could reasonably be expected to result in any Canadian Pension Plan having its registration revoked or refused by any administration of any relevant pension benefits regulatory authority or being required to pay any taxes (other than taxes the amounts of which are immaterial) or penalties under any applicable pension benefits or tax laws.

- (z) Insolvency No Obligor (a) as at the Second Closing Date has committed any act of bankruptcy, (b) as at the Second Closing Date is insolvent, or has proposed, or given notice of its intention to propose, a compromise or arrangement to its creditors generally, (c) as at the Second Closing Date has any petition for a receiving order in bankruptcy filed against it, made a voluntary assignment in bankruptcy, taken any proceeding with respect to any compromise or arrangement, taken any proceeding to have itself declared bankrupt or wound-up, taken any proceeding to have a receiver appointed of any part of its assets or has had any Encumbrancer take possession of any of its Property.
- (aa) Non-Arm's Length Transactions All agreements, arrangements or transactions between any Obligor, on the one hand, and any Affiliate of or other Person not dealing at Arm's Length with such Obligor (other than another Obligor and other than ordinary course arrangements with any employee, management or director of an Obligor and fees contemplated by the definition of "Permitted Distributions" and other than arrangements related to the TQ Debt), on the other hand, in existence as of the Second Closing Date are set forth on Schedule 9.1(aa).
- (bb) Debt There exists no Debt of an Obligor that is not Permitted Debt.
- (cc) Use of Credit Facility The advances pursuant to the Credit Facility will not be used by, or on behalf of or for the benefit of, any Person other than the Obligors.
- (dd) Margin Stock No Obligor or Subsidiary of an Obligor is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the US Federal Reserve System) ("**Margin Stock**"), and no part of the proceeds of the Credit Facility or any other extension of credit made hereunder will be used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock. Margin Stock constitutes less than 25% of the assets of the Borrower and its Subsidiaries which are subject to any limitation on sale, pledge or other restriction hereunder.
- (ee) Investment Company It is not an "investment company" nor a company "controlled" by an "investment company" within the meaning of the *Investment Company Act of 1940*, as amended.



- (ff) Employee Plans As of the Second Closing Date, no Obligor or Subsidiary of an Obligor nor any member of an Obligor's or Subsidiary of an Obligor's Controlled Group sponsors, maintains, contributes to or is required to contribute or, within the preceding five years, has sponsored, maintained, or contributed to any employee pension plan subject to Title IV of ERISA or Section 412 of the IRC. Other than routine claims for benefits, no Employee Plan is subject to any pending action, investigation, examination, claim or any other proceeding initiated by any Person. Except as required by Applicable Law, none of the Welfare Plans provide for retiree benefits or for benefits to former employees or to the beneficiaries or dependents of former employees.
- (gg) ERISA To the extent applicable, with respect to each US Pension Plan and except as could not reasonably be expected to result in material liability to any Obligor or any Subsidiary of an Obligor, (i) it and each other member of its Controlled Group has fulfilled its obligations under the minimum funding standards of and is in compliance in all respects with ERISA and the IRC and has not incurred any liability to the PBGC or under Title IV of ERISA, other than a liability to the PBGC for premiums under Section 4007 of ERISA; (ii) it does not have any unfunded contingent liabilities with respect to any post-retirement benefits under a Welfare Plan, other than liability for continuation coverage described in Part 6 of Title I of ERISA or as required under US State law requirements for health continuation coverage; (iii) no Reportable Event has occurred and is continuing with respect to any US Pension Plan, and no Obligor or Subsidiary of an Obligor or other member of the Controlled Group has engaged in a non-exempt prohibited transaction described in Section 406 of ERISA or Section 4975 of the IRC with respect to any Employee Plan; (iv) no notice of intent to terminate a US Pension Plan has been filed nor has any US Pension Plan been terminated; (v) no circumstances exist which would reasonably be expected to result in the PBGC's institution of proceedings to terminate, or appoint a trustee to administer, a US Pension Plan, nor has the PBGC instituted any such proceedings; (vi) neither it nor any member of its Controlled Group has completely or partially withdrawn from a Multiemployer Plan; and (vii) it and all current members of its Controlled Group have met their minimum funding requirements under ERISA with respect to all of their US Pension Plans and the present value of all benefits under each US Pension Plan does not exceed the fair market value of such US Pension Plan assets allocable to such benefits, as determined on the most recent valuation date of such US Pension Plan on the basis of actuarial assumptions specified for funding purposes in such US Pension Plan's actuarial valuation report and in accordance with the provisions of ERISA by more than \$1,000,000.
- (hh) OFAC It is not in violation of any of the country or list based economic and trade sanctions applicable to it and administered and enforced by OFAC. No Obligor or Subsidiary of an Obligor is a Sanctioned Person or a Sanctioned Entity. If any Obligor obtains actual knowledge or receives any written notice that any Obligor, any Affiliate or any Subsidiary of any Obligor is named on the then current OFAC SDN List (such occurrence, an "**OFAC Event**"), such Obligor shall promptly (i) give written notice to the Agent and the Lenders of such OFAC Event, and (ii) comply in all material respects with all applicable laws with respect to such OFAC Event (regardless of whether the party included on the OFAC SDN List is located within the jurisdiction of the United States of America), and each Obligor

hereby authorizes and consents to the Agent and the Lenders taking any and all steps the Agent or the Lenders deem necessary, in their sole but reasonable discretion, to avoid violation of all applicable laws with respect to any such OFAC Event, including the requirements of the Sanctioned Entities (including the freezing and/or blocking of assets and reporting such action to OFAC).

- (ii) Anti-Corruption Laws No part of the proceeds of the Credit Facility shall be used, directly or indirectly: (a) to offer or give anything of value to any official or employee of any foreign government department or agency or instrumentality or government-owned entity, to any foreign political party or party official or political candidate or to any official or employee of a public international organization, or to anyone else acting in an official capacity (collectively, “**Foreign Official**”), in order to obtain, retain or direct business by (i) influencing any act or decision of such Foreign Official in his official capacity, (ii) inducing such Foreign Official to do or omit to do any act in violation of the lawful duty of such Foreign Official, (iii) securing any improper advantage or (iv) inducing such Foreign Official to use his influence with a foreign government or instrumentality to affect or influence any act or decision of such government or instrumentality; (b) to cause any Lender to violate the *U.S. Foreign Corrupt Practices Act of 1977* (the “**FCPA**”); or (c) to cause any Lender to violate any other anti-corruption law applicable to such Lender (all laws referred to in clauses (b) and (c) being “**Anti-Corruption Laws**”).
- (jj) Sanctions Laws No Obligor and to the knowledge of the Borrower, no Affiliate or broker or other agent of any Obligor acting or benefiting in any capacity in connection with the Credit Facility is any of the following (a “**Restricted Person**”): (a) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the “**Executive Order**”); (b) a Person that is named as a “specially designated national and blocked person” on the most current list published by OFAC at its official website or any replacement website or other replacement official publication of such list or similarly named by any similar foreign governmental authority; (c) a Person that is owned 50 percent or more by any Person described in Section 9.1(jj)(b); (d) any other Person with which any Obligor is prohibited from dealing under any Sanctions laws applicable to such Obligor; or (e) a Person that derives more than 10% of its annual revenue from investments in or transactions with any Person described in Section 9.1(jj)(a), (b), (c) or (d). Further, none of the proceeds from the Credit Facility shall be used to finance or facilitate, directly or indirectly, any transaction with, investment in, or any dealing for the benefit of, any Restricted Person or any transaction, investment or dealing in which the benefit is received in a country for which such benefit is prohibited by any Sanctions laws applicable to any Obligor.
- (kk) RCRA No real estate located in the United States of America that is subject to a Mortgage contains any (i) hazardous waste management facility as defined pursuant to RCRA or any comparable state law, or (ii) site on or nominated for the National Priorities List promulgated pursuant to CERCLA or any State remedial priority list promulgated or published pursuant to any comparable State law.

- (II) CERCLA No Obligor or Subsidiary of an Obligor has any material liability for response or corrective action, natural resource damage or other harm pursuant to CERCLA, RCRA or any comparable state law.
- (mm) Residual Equity Schedule 9.1(mm) accurately sets out, as of the Second Closing Date, details of all of the securities that constitute the Residual Equity.

## **9.2 Survival and Repetition of Representations and Warranties**

The representations and warranties set out in Section 9.1 will be deemed to be repeated by the Borrower as the date of delivery of each Compliance Certificate by the Borrower (and for certainty such representations shall be made with respect to the date specified in such representation) except to the extent that on or prior to such date (a) the Borrower has advised the Agent in writing of a variation in any such representation or warranty, and (b) if such variation in the opinion of the Lenders, acting reasonably, is material to the Property, liabilities, affairs, business, operations, prospects or condition (financial or otherwise) of the Obligors considered as a whole or could have, or be reasonably likely to result in, a Material Adverse Effect, the Lenders have approved such variation.

## **ARTICLE 10**

### **COVENANTS**

#### **10.1 Positive Covenants**

So long as this Agreement is in force and except as otherwise permitted by the prior written consent of the Majority Lenders, the Borrower shall and shall cause each other Obligor and each of their respective Subsidiaries to:

- (a) Timely Payment Make due and timely payment of the Obligations required to be paid by it hereunder.
- (b) Conduct of Business, Maintenance of Existence, Compliance with Laws Carry on and conduct its business and operations in a proper, efficient and businesslike manner, in accordance with good business practice; preserve, renew and keep in full force and effect its existence except as may otherwise be permitted pursuant to Section 10.4(b); and take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of its business and to comply in all material respects with all Material Contracts, Material Licences and Requirements of Law except where the failure to comply would have no impact or only an immaterial impact on the Business.
- (c) Further Assurances Provide the Agent and the Lenders with such other documents, opinions, consents, acknowledgements and agreements requested by the Agent, acting reasonably as are within its control and reasonably necessary to implement this Agreement or the other Loan Documents from time to time.
- (d) Access to Information Promptly provide the Agent with all information reasonably requested by the Agent for and on behalf of the Lenders from time to time concerning its financial condition and Property, and during normal business

hours and upon reasonable notice, permit representatives of the Agent and the Lenders to inspect any of its Property (the cost and expense of which will be the responsibility of the Agent and Lenders' commencing the second visit each Fiscal Year (except following the occurrence and during the continuance of an Event of Default)) and, following the occurrence and during the continuance of an Event of Default, to examine and take extracts from its financial books, accounts and records including but not limited to accounts and records stored in computer data banks and computer software systems, and to discuss its financial affairs, its business or any part of its Property with its senior officers and, following the occurrence and during the continuance of an Event of Default (in the presence of such of its representatives as it may designate), its auditors.

- (e) Obligations and Taxes Pay or discharge or cause to be paid or discharged, before the same shall become delinquent all Taxes imposed upon it or upon its income or profits or in respect of its business or Property (other than Taxes the amounts of which are immaterial and do not constitute an Encumbrance on an Obligor's Property that ranks *pari passu* or prior to the Encumbrances granted in favour of the Lenders) and file all tax returns in respect thereof; provided, however that it shall not be required to pay or discharge or to cause to be paid or discharged any such amount so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings and an adequate reserve in accordance with GAAP has been established in its books and records.
- (f) Use of Credit Facility Use the proceeds of the Credit Facility as contemplated by Section 2.2.
- (g) Insurance Maintain or cause to be maintained with reputable insurers, coverage of such types as is customary for and would be maintained by a corporation with an established reputation engaged in the same or similar business in similar locations and provide to the Agent, upon request and not more frequently than on an annual basis, evidence of such coverage. The Borrower shall, on an annual basis prior to the expiry or replacement of any insurance policy, at the Agent's request send copies of all renewed or replacement policies to the Agent. The Agent on behalf of the Lenders shall be indicated, as applicable, as first loss payee in respect of property insurance and additional insured in respect of liability insurance, and all property insurance policies shall contain such standard mortgage clauses as the Agent shall reasonably require for the Lenders' protection.
- (h) Notice of Litigation Promptly notify the Agent on becoming aware of the occurrence of any litigation, dispute, arbitration, proceeding or other circumstance the result of which could reasonably be expected to result in (a) a judgment or award against it in excess of \$1,500,000 or (b) a Material Adverse Effect, and from time to time provide the Agent with all reasonable information requested by the Agent concerning the status of any such proceeding.
- (i) Other Notices Promptly, upon having knowledge, give notice to the Agent on behalf of the Lenders of:
  - (i) any notice of expropriation affecting any Obligor in which the value of the property being expropriated exceeds \$1,500,000;

- (ii) any violation of any Applicable Law which does or could reasonably be expected to have a Material Adverse Effect on any Obligor;
  - (iii) any default under any Debt of an Obligor in an amount in excess of \$1,500,000;
  - (iv) any termination prior to maturity of or written notice of intent to terminate prior to maturity of, or default (after giving effect to any grace period) under a Material Contract or any termination or written notice of intent to terminate, lapse, rescission or default (after giving effect to any grace period) under a Material Licence;
  - (v) any Material Adverse Effect;
  - (vi) any damage to or destruction of any property, real or personal, of any Obligor having a replacement cost in excess of \$1,500,000;
  - (vii) any threatened or pending litigation or governmental, regulatory or arbitration proceeding or labour controversy or fine, penalty or other similar monetary obligation against or imposed upon the Borrower or any Subsidiary or any of their Property which could reasonably be expected to be determined adversely to the applicable Obligor and which, if so determined, could reasonably be expected to have a Material Adverse Effect or give rise to an Event of Default;
  - (viii) the receipt of insurance proceeds by any Obligor in excess of \$1,500,000;
  - (ix) any Default or Event of Default;
  - (x) any Encumbrance registered against any property or assets of any Obligor, other than a Permitted Encumbrance;
  - (xi) any Change of Control;
  - (xii) any Obligor infringing or misappropriating or having been alleged in writing to be infringing or misappropriating, the intellectual property rights of any other Person in a manner that could reasonably be expected to have a Material Adverse Effect; or
  - (xiii) any change to the securities that constitute the Residual Equity, including any deemed change pursuant to clause (iv) of the definition of the Residual Equity or pursuant to clauses (a) through (c) of the definition of the Residual Equity.
- (j) ERISA Except as could not reasonably be expected to result in material liability to any Obligor or any Subsidiary of an Obligor, promptly pay and discharge all obligations and liabilities arising under ERISA of a character which if unpaid or unperformed could reasonably be expected to result in the imposition of an Encumbrance other than a Permitted Encumbrance against any of its properties; promptly notify the Agent of (i) the occurrence of any Reportable Event with respect to a US Pension Plan, (ii) receipt of any notice from the PBGC of its

intention to seek termination of any US Pension Plan or appointment of a trustee therefor, (iii) its intention to terminate or withdraw from any US Pension Plan or Multiemployer Plan which would result in the incurrence by it or any Subsidiary of any material liability, fine or penalty, and (iv) the occurrence of any event with respect to any US Pension Plan or Multiemployer Plan which would result in the incurrence by it or any Subsidiary of any material liability, fine or penalty, and (v) any material increase in its contingent liability with respect to any post-retirement Welfare Plan benefits under a Welfare Plan other than liability for continuation coverage described in Part 6 of Subtitle B of Title I of ERISA or as required under US state law requirements for health continuation coverage.

- (k) Environmental Compliance Operate its business in compliance in all material respects with Requirements of Environmental Laws and operate all Property owned, leased or otherwise used by it such that no material obligation, including a clean-up or remedial obligation, will arise under any Requirements of Environmental Law; provided, however, that if any such claim is made or any such obligation arises, the applicable Obligor or Subsidiary of an Obligor shall promptly satisfy, address or contest such claim or obligation at its own cost and expense. The Borrower shall promptly notify the Agent upon: (a) learning of the existence of any Hazardous Material generated or used by Obligor or a Subsidiary of an Obligor or located on, above or below the surface of any land which it owns, leases, operates, occupies, uses or controls (except those being stored, used or otherwise handled in compliance with Requirements of Environmental Law), or contained in the soil, surface, water or groundwater on or beneath such land; and (b) the occurrence of any release, spill, leak, emission, discharge, leaching, dumping or disposal of Hazardous Materials that has occurred on or from such land, which, in either the case of (a) or (b), is likely to result in Environmental Liability to Obligor in excess of \$500,000. Each Obligor and each Subsidiary of an Obligor shall, with respect to each owned real estate in the United States not allow the presence or operation at such real estate of any (i) land filler dump, or (ii) hazardous waste management facility or solvent waste disposal facility as defined pursuant to RCRA or any comparable state law.
- (l) Security With respect to the Security:
  - (i) provide to the Agent the Security required from time to time pursuant to Article 11 in accordance with the provisions of such Article, accompanied by customary supporting resolutions, certificates and opinions in form and substance satisfactory to the Agent; and
  - (ii) do, execute and deliver all such things, documents, security, agreements and assurances as may from time to time reasonably be requested by the Agent to ensure that the Agent holds at all times valid, enforceable, perfected first priority Encumbrances (subject only to Permitted Encumbrances) from the Obligors meeting the requirements of Article 11.
- (m) Maintenance of Property Generally keep the Property necessary in its business in good working order and condition, normal wear and tear excepted, if requested by the Agent, and maintain all Intellectual Property necessary to carry on its business.

- (n) Landlord Consents Use commercially reasonable efforts, if requested by the Agent, to obtain a consent agreement from each landlord of premises that are leased at any time and from time to time by any Obligor which agreement shall provide, *inter alia*, (a) for consent to the grant of an Encumbrance against the Obligor's interest in such lease pursuant to the Security. Such agreement shall be in form and content satisfactory to the Agent on behalf of the Lenders, acting reasonably. For purposes of this Section 10.1(n), "commercially reasonable efforts" shall not require any Obligor to pay any fees (other than reasonable legal fees of the landlord, the Obligor and the Agent) or agree to other adverse economic arrangements which are adverse in any material respect to any Obligor in order to obtain a landlord consent.
- (o) Expenses Pay promptly (i) all reasonable and itemized fees and disbursements (including sales tax, goods and services tax and harmonised sales and goods and services tax) incurred or paid by the Agent, its Affiliates and the Lenders in connection with the preparation, negotiation, execution, delivery, maintenance, amendment and enforcement (including any workouts in connection with or in lieu of any enforcement) of the Loan Documents and in connection with the consummation of the transactions contemplated by the Loan Documents (but specifically excluding, (A) unless an Event of Default has occurred and is continuing, any assignment or participation costs incurred by the Agent or any Lender, or (B) any loan syndication costs incurred by the Agent or any Lender at any time), including without limitation, all court costs and all reasonable fees and disbursements of lawyers, auditors, consultants and accountants, and (ii) all reasonable out-of-pocket expenses incurred by the Agent or any Lender, including the reasonable fees, charges and disbursements of counsel, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section, including all such out-of-pocket expenses incurred during any workout restructuring or negotiations in respect of the advances.
- (p) Pension Plans and US Pension Plans Maintain all Canadian Pension Plans and Employee Plans relating to each Obligor in compliance with all Applicable Laws in all material respects.
- (q) Employee Benefit and Welfare Plans Maintain all Welfare Plans and Canadian Welfare Plans provided by it and relating to its business in compliance with all Applicable Law in all material respects.
- (r) Material Contracts and Material Licences At the request of the Agent, from time to time, provide to the Lenders certified copies of any Material Contracts and Material Licences.
- (s) Cash Management and Bank Accounts Maintain all cash management services (which, for certainty, includes all bank accounts) of the Obligors (other than in the case of cash management requirements in the United States of America) with BNS.
- (t) Management Agreements Provide to the Agent an executed copy of each management agreement (and any amendment thereto) entered into by the Borrower with TorQuest or its Affiliates.

- (u) OFAC If any Obligor obtains actual knowledge of any OFAC Event, such Obligor shall promptly (i) give written notice to the Agent and the Lenders of such OFAC Event, and (ii) comply in all material respects with all Applicable Laws with respect to such OFAC Event (regardless of whether the party included on the OFAC SDN List is located within the jurisdiction of the United States of America), including the OFAC Sanctions Programs, and each Obligor hereby authorizes and consents to the Agent and the Lenders taking any and all steps the Agent or the Lenders deem necessary, in their sole but reasonable discretion, to avoid violation of all Applicable Laws with respect to any such OFAC Event, including the requirements of the OFAC Sanctions Programs (including the freezing and/or blocking of assets and reporting such action to OFAC).
- (v) US Facility Lease Use commercially reasonable efforts to provide to the Agent a landlord consent, in form and substance satisfactory to the Agent, with respect to the US Facility.
- (w) Real Estate
  - (i) In the event that any Obligor acquires in fee simple any real Property located in the United States with a fair market value of US\$1,000,000, such Obligor shall execute and/or deliver, or cause to be executed and/or delivered, to Agent: (i) if required under Applicable Law, an appraisal complying with FIRREA (it being understood that existing appraisals delivered to the Agent by the Borrower may satisfy this requirement); (ii) Standard Flood Hazard Determination Form in respect of such Property, and if such Property is located in a Special Flood Hazard Area, evidence of (x) flood insurance in an amount as required by Applicable Law or as reasonably acceptable to the Agent acting reasonably, (y) compliance with the additional requirements of the National Flood Insurance Program, including without limitation a flood notification form signed by the applicable party and such insurance policy endorsements as may be required by the Agent and the Lenders; (iii) a fully executed Mortgage, in form and substance reasonably satisfactory to the Agent together with an A.L.T.A. lender's title insurance policy issued by a title insurer reasonably satisfactory to the Agent, in form and substance and in an amount (such amount not to exceed 115% of the fair market value of such property (as determined by the Borrower and accepted by the Agent, acting reasonably)), in each case, reasonably satisfactory to the Agent insuring that the Mortgage is a valid and enforceable first priority Encumbrance on the respective property, free and clear of Encumbrances (other than Permitted Encumbrances and any other defects in title acceptable to the Agent, acting reasonably); (iv) then current A.L.T.A. surveys certified to Agent and the Lenders by a licensed surveyor unless the issuer of the lender's title insurance policy will issue such policy without a survey exception or alternatively, with a survey endorsement; (v) if requested by Agent, acting reasonably, and to the extent available, copies of the "Phase I" environmental site assessment, (vi) unless waived by Agent in its discretion, an appraisal complying with FIRREA, and (vii) a local legal opinion of counsel with respect to the enforceability of the Mortgages, which is in form and substance satisfactory to the Agent, acting reasonably; provided that, on the



reasonable request of the Agent having regard to the aggregate or individual value or business usage of any real Property not subject to a Mortgage, the Obligors shall deliver such of the above deliverables as the Agent shall request, acting reasonably.

- (ii) In the event that any Obligor acquires in fee simple any real Property located in Canada with a fair market value of \$500,000, such Obligor shall execute and/or deliver, or cause to be executed and/or delivered, to Agent: (i) an appraisal (it being understood that existing appraisals delivered to the Agent by the Borrower may satisfy this requirement); (ii) a fully executed demand debenture, in form and substance reasonably satisfactory to Agent together with a lender's title insurance policy issued by a title insurer reasonably satisfactory to Agent, in form and substance and in an amount equal to the fair market value of such property (as determined by the Borrower and accepted by the Agent, acting reasonably), in each case, reasonably satisfactory to Agent insuring that the demand debenture is a valid and enforceable first priority Encumbrance on the respective property, free and clear of all Encumbrances (other than Permitted Encumbrances); (iii) then current surveys certified to Agent and the Lenders by a licensed surveyor unless the issuer of the lender's title insurance policy will issue such policy without a survey exception or alternatively, with a survey endorsement; (iv) if requested by Agent, acting reasonably, and to the extent available, copies of the "Phase I" environmental site assessment, and (v) a local legal opinion of counsel with respect to the enforceability of such demand debenture, which is in form and substance satisfactory to the Agent, acting reasonably; provided that, on the reasonable request of the Agent having regard to the aggregate or individual value or business usage of any real Property not subject to a Mortgage, the Obligors shall deliver such of the above deliverables as the Agent shall request, acting reasonably.
- (iii) Without limiting the generality of the foregoing, to the extent reasonably necessary to maintain the continuing priority of the Encumbrance of any existing Mortgages or demand debenture as security for the Obligations in connection with the incurrence of an incremental facility or an increase in the Credit Facility, as determined by the Agent in its reasonable discretion, the applicable Obligor to any Mortgages or demand debenture shall (i) enter into and deliver to Agent, at the direction and in the reasonable discretion of Agent, a mortgage modification or new Mortgage or demand debenture in proper form for recording in the relevant jurisdiction and in a form reasonably satisfactory to Agent and substantially similar in form to such existing Mortgages or demand debenture, (ii) cause to be delivered to Agent for the benefit of the Lenders an endorsement to the title insurance policy, date down(s) or other evidence reasonably satisfactory to Agent ensuring that the priority of the Encumbrance of the Mortgages or demand debenture as security for the Obligations has not changed and confirming and/or ensuring that since the issuance of the title insurance policy there has been no material and adverse change in the condition of title and there are no intervening liens or encumbrances which may then or thereafter take priority over the

Encumbrance of the Mortgages or demand debenture (other than Permitted Encumbrances) and (iii) deliver, at the request of Agent, to Agent and/or all other relevant third parties, all other items reasonably necessary to maintain the continuing priority of the Encumbrance of the Mortgages or demand debenture as security for the Obligations.

## 10.2 **Financial Covenants**

So long as this Agreement is in force and except as otherwise permitted by the prior written consent of the Majority Lenders:

- (a) **Total Debt to EBITDA Ratio** Commencing March 31, 2025, the Borrower, on a consolidated basis, will ensure that its Total Debt to EBITDA Ratio at all times for the preceding Four Quarter Period is not greater than the following amounts during the following periods:

<b><u>Period</u></b>	<b><u>Ratio</u></b>
March 31, 2025 to December 30, 2025	7.25:1.0
December 31, 2025 to June 29, 2026	6.75:1.0
Thereafter	6.25:1.0

- (b) **Fixed Charge Coverage Ratio** Commencing March 31, 2025, the Borrower, on a consolidated basis, will ensure that its Fixed Charge Coverage Ratio is at all times not less than 1.05:1.0.

For the purposes of calculating EBITDA for the financial covenants in paragraphs (a) and (b) above, the following shall be used:

<b>Fiscal Quarter Ending</b>	<b>Canadian EBITDA</b>	<b>US EBITDA</b>
December 31, 2023 through June 30, 2025	Actual	US\$16,254,000
September 30, 2025	Actual	US\$12,191,000 plus actual US EBITDA for Fiscal Quarter ending September 30, 2025
December 31, 2025	Actual	US\$8,127,000 plus actual US EBITDA for Fiscal Quarters ending September 30, 2025 and December 31, 2025

Fiscal Quarter Ending	Canadian EBITDA	US EBITDA
March 31, 2026	Actual	US\$4,064,000 plus actual US EBITDA for Fiscal Quarter ending September 30, 2025, December 31, 2025 and March 31, 2026
June 30, 2026 and thereafter	Actual	Actual

- (c) Fixed Charge Coverage Ratio Commencing March 31, 2025, the calculation of Fixed Charges for the purpose of calculation of the Fixed Charge Coverage Ratio shall include a “theoretical” amortization amount which will be calculated as \$900,000 per Four Quarter Period in respect of the Senior Term Facility and an amount equal to 5% of the outstanding principal balance of the Senior Delayed Draw Facility. Commencing June 30, 2025 and until completion of a Four Quarter Period thereafter, each scheduled principal payment pursuant to the Senior Delayed Draw Facility and the Senior Term Facility, shall be annualized. Commencing the Fiscal Quarter ended March 31, 2025 Interest Expense will be annualized each Fiscal Quarter until the completion of four (4) Fiscal Quarters.
- (d) Minimum EBITDA The Borrower on a consolidated basis, will ensure that its last twelve (12) month Canadian EBITDA as of December 31, 2024 is no less than \$4,107,030.
- (e) Minimum Liquidity The Borrower, on a consolidated basis, shall maintain Liquidity of no less than \$2,000,000.
- (f) Minimum Volume Production The Borrower will ensure that the case volume in connection with its US operations for the Fiscal Quarter ended December 31, 2024 is no less than 3,591,250 cases.
- (g) Equity Cure In the event of any Event of Default of the financial covenants set forth in Section 10.2(a), (b) or (d) (the “**Designated Financial Covenants**”), any equity or Shareholder Subordinated Debt contribution from the shareholders of the Borrower within ten (10) days of the Borrower being required to deliver the financial statements as provided for in Section 10.3(a), (b) or (c) will, at the written request of the Borrower, be included in the calculation of EBITDA solely for the purposes of determining compliance with such financial covenants at the end of the applicable Fiscal Quarter and any subsequent period that includes such Fiscal Quarter (any such equity contribution, a “**Specified Equity Contribution**”); provided that (a) the amount of any Specified Equity Contribution and the use of proceeds therefrom will be no greater than the amount required to cause the Borrower to be in compliance with the applicable financial covenants, (b) all Specified Equity Contributions and the use of proceeds therefrom will be disregarded for all other purposes under the Loan Documents (including, to the extent applicable, calculating EBITDA for purposes of determining basket levels, pricing and other items governed by reference to EBITDA or that include EBITDA in the determination thereof in any respect), (c) there shall be (x) no more than

four (4) Specified Equity Contributions made during the term of this Agreement, (y) a Specified Equity Contribution may not be made more than twice in any Four Quarter Period, (z) the aggregate amount of the four Specified Equity Contributions shall not exceed \$15,000,000, and (xx) the proceeds of all Specified Equity Contributions are actually received by the Borrower and the Borrower has immediately upon receipt of the proceeds of such Specified Equity Contribution delivered to the Agent one hundred percent (100%) of the aggregate proceeds of such Specified Equity Contribution for application to the Senior Term Facility (a “**Repayment**”) in inverse order of maturity, (d) the Repayment shall be ignored for purposes of determining the amount of Debt of the Borrower and calculating the financial covenants set forth in Section 10.2(a) or (b) until such time that the Specified Equity Contribution ceases to be calculated as EBITDA pursuant to the provisions of this Section 10.2(g). The Borrower shall provide notice to the Agent of its intention to cause to be made a Specified Equity Contribution prior to the date the financial statements are required to be delivered pursuant to Section 10.3. If, after giving effect to the recalculations set forth in this Section 10.2(g), the Borrower shall then be in compliance with the Designated Financial Covenants, the Borrower shall be deemed to have satisfied the requirements of the Designated Financial Covenants and the applicable breach or default of the Designated Financial Covenants that had occurred shall be deemed cured for the purposes of this Agreement. Nothing contained herein shall be interpreted to restrict the Agent and the Lenders from accelerating the Obligations following the occurrence and during the continuance of an Event of Default pursuant to Section 11.1 as a result of the occurrence of any Event of Default other than in respect of the Designated Financial Covenants that are addressed as a consequence of a Specified Equity Contribution being made.

- (h) Liquidity Cure. In the event of any Event of Default of the financial covenant set forth in Section 10.2(e) (the “**Liquidity Covenant**”), any equity or Shareholder Subordinated Debt contribution from the shareholders of the Borrower within ten (10) days of the Liquidity Covenant being breached (the “**Breach Date**”) will, at the written request of the Borrower, be included in the calculation of Liquidity (as cash on hand) for the purposes of determining compliance with such financial covenant from the Breach Date to the date of contribution and any subsequent date in which such contribution remains as cash on hand (any such contribution, a “**Liquidity Contribution**”); provided that the aggregate amount of Liquidity Contributions will be no greater than \$10 million.

### 10.3 Reporting Requirements

The Borrower shall, and shall cause each Subsidiary to, maintain a standard system of accounting in accordance with GAAP and shall, subject to applicable privacy legislation and non-disclosure required in order to maintain solicitor-client privilege, furnish to the Agent (on behalf of the Lenders) and its duly authorized representatives such information respecting the business and financial condition of the Borrower and each Subsidiary of the Borrower as the Agent or any Lender (acting through the Agent) may reasonably request; and without any request, shall furnish to the Agent (on behalf of the Lenders):

- (a) Annual Reports As soon as available and in any event within one-hundred and twenty (120) days after the end of each of the Borrower's Fiscal Years, cause to be prepared and delivered to the Agent, (i) the annual audited consolidated

financial statements of the Borrower including, in each case and without limitation, balance sheet, statement of income and statement of cash flows for such Fiscal Year, prepared in accordance with GAAP together with (ii) a comparison of the consolidated financial results to the budget set forth in the Annual Business Plan and to the previous Fiscal Year and (iii) a management discussion and analysis with respect to such consolidated financial results, all as certified by an officer of the Borrower.

- (b) Quarterly Reports As soon as available and in any event within forty-five (45) days of the end of each Fiscal Quarter, cause to be prepared and delivered to the Agent as at the end of such Fiscal Quarter unaudited financial statements of the Borrower prepared on a consolidated basis, including, in each case and without limitation, balance sheet, statement of income, statement of cash flows, and a list of all outstanding Hedge Arrangements, which shall be prepared in accordance with GAAP (subject to usual year-end adjustments and the absence of full note and deferred tax disclosure) together with a comparison of such consolidated financial results to the budget set forth in the Annual Business Plan and to the same period in the previous Fiscal Year and together with management discussion and analysis with respect to such consolidated financial results.
- (c) Annual Business Plan As soon as available, and in any event no later than sixty (60) days after the end of each Fiscal Year of the Borrower, a copy of the Annual Business Plan for the following Fiscal Year, such Annual Business Plan to be in reasonable detail prepared by the Borrower and in form approved by the directors of the Borrower and, following the consummation of any Acquisition which has a material effect on such Annual Business Plan, the Borrower shall provide an update of the Annual Business Plan, giving effect to such Acquisition within a reasonable period following such Acquisition.
- (d) Monthly Reporting As soon as available and in any event no later than thirty (30) days of the end of each calendar month, (x) monthly progress with respect to the US Facility which shall outline the budget to actuals and the estimated cost to complete, and (y) monthly progress reporting from Alvarez & Marsal.
- (e) Compliance Certificate Together with the financial statements referred to in (a) and (b) above and within thirty (30) days following the end of each calendar month, provide the Agent with a Compliance Certificate, which shall set forth the calculations supporting such statements in respect of Section 10.2 hereof. For purposes of the Compliance Certificate, all calculations of the Equivalent Amount in Canadian Dollars of any amounts in another currency shall be based on the Bank of Canada noon spot rate on the last day of the Fiscal Quarter or Fiscal Year, as applicable, for which the relevant financial statements are delivered or, if such day is not a Business Day, the immediately preceding Business Day.
- (f) Management Letters Upon receipt thereof, copies of all “management letters” submitted by the Auditor in connection with the Borrower’s audited financial statements.
- (g) Sufficient Copies to Agent Ensure that in complying with this Section 10.3, the Agent is supplied with sufficient quantities of all materials for each of the Lenders

and the Agent and wherever possible, that electronic copies are sent which the Agent is then authorized to send electronically to the Lenders.

- (h) Anti-Money Laundering Laws Following any request therefor, information and documentation reasonably requested by the Agent or any Lender for purposes of compliance with applicable “know your customer” requirements under the PATRIOT Act or other applicable anti-money laundering laws.
- (i) Appraisals From time to time, if the Agent or a Lender reasonably determines that obtaining appraisals is necessary in order for the Agent or any Lender to comply with Applicable Laws or regulations (including any appraisals required to comply with FIRREA), and at any time if an Event of Default shall have occurred and be continuing, the Agent may, or may require the Borrower to, in either case at the Borrower’s expense, obtain appraisals in form and substance and from appraisers reasonably satisfactory to the Agent stating the then current fair market value or such other value as reasonably determined by the Agent (for example, replacement cost for purposes of Flood Insurance) of all or any portion of the fee owned real property of any Obligor.

#### **10.4 Negative Covenants**

So long as this Agreement is in force and except as otherwise permitted by the prior written consent of the Majority Lenders, the Borrower shall not and shall ensure that each Obligor and each of their respective Subsidiaries shall not:

- (a) Disposition of Property Except for Permitted Dispositions, Dispose of, in one transaction or a series of transactions, all or any part of its Property, whether now owned or hereafter acquired.
- (b) No Consolidation, Amalgamations, etc. Consolidate, amalgamate or merge with any other Person, export a corporation into a jurisdiction outside of Canada or the United States of America, enter into any corporate reorganization or other transaction intended to effect or otherwise permit a change in its existing corporate or capital structure, liquidate, wind-up or dissolve itself, or permit any liquidation, winding-up or dissolution unless prior written approval has been received from the Majority Lenders and such customary documentation as is required by Lenders’ Counsel, acting reasonably, is delivered concurrently with such transaction. Notwithstanding the foregoing, (A) an Obligor may consolidate, amalgamate or merge with another Obligor, liquidate, wind-up or dissolve itself into another Obligor, (B) an Excluded Subsidiary may consolidate amalgamate or merge with an Obligor, liquidate, wind-up or dissolve, itself into an Obligor, and (C) an Obligor may change its capital structure subject to (i) there existing no Default or Event of Default, (ii) the Agent being provided with no less than fifteen (15) days’ prior written notice of the occurrence of such event, (iii) concurrent with such event, the Agent being provided with such additional Loan Documents that it requires, acting reasonably, in connection with such event including, if required, to obtain Security over any Equity Interests of the Borrower and any of its Subsidiaries arising therefrom, (iv) the Agent being provided with such customary legal opinions as it requires, acting reasonably, in connection therewith and (v) such event not having any negative impairment on the Security

granted in favour of the Lenders and the obligations of the Obligors pursuant to the Loan Documents in effect at such time.

- (c) No Change of Name Change its name, adopt a French form of name or change its jurisdiction of incorporation or formation, its chief executive office, principal place of business or location at which it keeps records in respect of Accounts Receivable, in each case without providing the Agent with fifteen (15) days' prior written notice thereof, provided that the Agent may shorten or waive such notice without consent of the Lenders.
- (d) No Debt Create, incur, assume or permit any Debt to remain outstanding, other than Permitted Debt.
- (e) No Investments Make any Investments except (i) Investments permitted in accordance with the provisions of Sections 10.4(i), 10.4(m) and 10.4(o), (ii) Cash Equivalents, (iii) Permitted Intercompany Debt, (iv) Investments in Obligors, and (v) Investments with the proceeds of the issuance by the Borrower or Holdco of Equity Interests and Shareholder Subordinated Debt for such purpose.
- (f) No Financial Assistance Give any Financial Assistance to any Person other than (i) Financial Assistance in the form of Investments permitted pursuant to the provisions of Section 10.4(e), (ii) Permitted Intercompany Debt, and (iii) loans to employees to purchase Equity Interests of the Borrower provided that such funds are immediately thereafter re-invested in the Borrower to purchase Equity Interests and such Equity Interests are pledged to the Agent as required by this Agreement.
- (g) No Distributions Make any Distribution except Permitted Distributions.
- (h) No Encumbrances Create, incur, assume or permit to exist any Encumbrance upon any of its Property except Permitted Encumbrances.
- (i) Acquisitions Make any Acquisitions (subject to compliance with the provisions contained herein) or other Acquisitions that comply with the following terms and conditions:
  - (i) at the time of the Acquisition there exists no Default or Event of Default and there shall exist no Default or Event of Default after giving effect to the completion of the Acquisition;
  - (ii) the Agent shall have been provided with the Borrower's business, financial, accounting, tax, legal and environmental due diligence with respect to the target of such Acquisition which shall include all due diligence material prepared by the Borrower or TorQuest on its behalf in addition to such other information as may be required by the Lenders acting reasonably;
  - (iii) the Agent shall have received external financial statements for the target of the Acquisition (which shall include historical information for a two year period and a three year *pro forma* financial forecast on a stand-alone and consolidated basis to the extent the Person who is the target of such

Acquisition has existed for such period of time), business plans prepared in connection with the Acquisition and a financial forecast prepared by the Borrower taking into account the Acquisition of the target;

- (iv) the aggregate cash consideration (including future payments due and Earn Out Obligations) of any particular Acquisition shall not exceed a total consideration of \$10,000,000 unless funded solely by the issuance of Equity Interests or the increase of Shareholder Subordinated Debt;
  - (v) the aggregate cash consideration (including future payments due and Earn Out Obligations) for all Acquisitions during any Fiscal Year (excluding Acquisitions funded solely from the issuance of Equity Interests and/or the incurrence of Shareholder Subordinated Debt) shall not exceed \$20,000,000;
  - (vi) after giving effect to the Acquisition, the Borrower shall, on a *pro forma* basis, be in compliance with each of the financial covenants (based on adjustments consistent with the definition of EBITDA) provided for in Section 10.2 of this Agreement for the Four Quarter Period immediately preceding the proposed Acquisition and shall provide a Compliance Certificate evidencing as such;
  - (vii) the Acquisition shall not constitute a Hostile Take-Over Bid;
  - (viii) the Agent shall receive at least fifteen (15) days' prior written notice of such Acquisition, which notice shall include a description of such proposed Acquisition;
  - (ix) the business subject to such Acquisition shall have its primary operations in Canada or the United States of America and shall be in the Business or a reasonably related business;
  - (x) if such Acquisition is of Equity Interests of a Person or Persons, the Agent shall receive the documents and agreements contemplated by Section 10.4(o)(c), (d), (e) and (f) within the thirty (30) day time frame specified therein; and
  - (xi) on or prior to the date of the Acquisition, the Agent shall receive copies of the acquisition agreement and such other related material agreements requested by the Agent.
- (j) No Change to Year End Make any change to its Fiscal Year, provided that the Borrower may change its Fiscal Year to a period ending on December 31 without the consent of the Lenders, provided that the Agent shall be provided with no less than thirty (30) days' prior written notice. Upon receipt by the Agent of any such notice, (i) references in this Agreement to a Fiscal Year shall thereafter mean the 12-month period ending December 31, (ii) references in this Agreement to a Fiscal Quarter shall thereafter mean the successive three-month periods ending on or about March 31, June 30, September 31 and December 31, and (iii) unless the context suggests otherwise, references to an action being



made at the end of a specific Fiscal Quarter shall thereafter mean the March 31, June 30, September 30 or December 31 date subsequent to the intended date.

- (k) No Change to Business Carry on any business other than the Business.
- (l) Location of Assets in Other Jurisdictions Except for any Property in transit in the ordinary course of business, acquire any Property outside of the Relevant Jurisdictions identified in Schedule 9.1(r) or move any Property from one jurisdiction to another jurisdiction where the movement of such Property would cause the Encumbrance of the Security over such Property to cease to be perfected under Applicable Law, or suffer or permit in any other manner any of its Property to not be subject to the Encumbrance of the Security or to be or become located in a jurisdiction as a result of which the Encumbrance of Security over such Property is not perfected, unless (a) the Obligor has first given ten (10) days' prior written notice thereof to the Agent (which notice the Agent may shorten or waive without consent of the Lenders), and (b) the applicable Obligor has first executed and delivered to the Agent all Security and all financing or registration statements in form and substance satisfactory to the Agent which the Agent or its counsel, acting reasonably, from time to time deem necessary or advisable to ensure that the Security at all times constitutes a perfected first priority Encumbrance (subject only to Permitted Encumbrances) over such Property notwithstanding the movement or location of such Property as aforesaid together with such customary supporting certificates, resolutions, opinions and other documents as the Agent may deem necessary, acting reasonably, or desirable in connection with such security and registrations.
- (m) No Share Issuance Issue any Equity Interests unless the Person to whom such Equity Interests are issued is an Obligor (or in the case of issuances by the Borrower, to Holdco) and then only if the additional Equity Interests so issued are concurrently and validly pledged to the Agent under the Security and all resolutions (corporate, shareholder or otherwise) required by the Agent, acting reasonably, in connection therewith are delivered to the Agent.
- (n) Amendments to Organizational Documents Subject to Section 10.4(b) and (c), amend any of its Organizational Documents in a manner that would be prejudicial to the interests of any of the Lenders under the Loan Documents.
- (o) No New Subsidiaries Create or acquire any Subsidiary after the date of this Agreement unless: (a) such Subsidiary exists pursuant to the laws of Canada, any Province or Territory of Canada or any state of the United States of America; (b) all of the issued and outstanding capital of such Subsidiary is owned by an Obligor; and (c) within thirty (30) days of such creation or acquisition (i) such new Subsidiary provides, *inter alia*, a legal, valid and enforceable guarantee in favour of the Agent for and on behalf of the Lenders in form and substance satisfactory to the Lenders (it being acknowledged the forms delivered on the Closing Date are satisfactory subject to any amendments that may be reasonably required by the Agent); (ii) all of the issued and outstanding shares of such new Subsidiary are pledged to the Agent (iii) such new Subsidiary provides such Security as the Agent views as necessary in order to create a first priority perfected Encumbrance (subject to Permitted Encumbrances) in all assets acquired and/or Equity Interests of the acquired Person or Persons (including all third party

consents reasonably required by the Agent) and (iv) all resolutions (corporate, shareholder or otherwise) required by the Agent, acting reasonably, in connection therewith, are delivered to the Agent, and in each case customary legal opinions are delivered by Borrower's Counsel to the Lenders, acting reasonably.

- (p) Hostile Take-Over Bid Make or complete a Hostile Take-Over Bid.
- (q) Non-Arm's Length Transactions Except as set out in Schedule 9.1(aa) or in respect of the transactions contemplated by the Shareholder Contribution Agreement, effect any transactions with any Person (other than an Obligor) not dealing at Arm's Length with the transacting Obligor, except any transaction on terms no less favourable to such Obligor as would be obtainable in a comparable transaction with a Person which is at Arm's Length with such Obligor, as applicable; provided that the foregoing shall not apply to:
  - (i) transactions between Obligors; or
  - (ii) other transactions or arrangements expressly permitted by this Agreement.
- (r) Sale and Leaseback Except for Permitted Dispositions pursuant to clause (e) of such definition, enter into any arrangement with any Person providing for the leasing by any Obligor, as lessee, of Property which has been or is to be sold or transferred by such Obligor to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such Property or the lease obligation of any Obligor.
- (s) US Bank Accounts Open or maintain any bank accounts in the United States of America other than with BNS unless the Agent has received a deposit account control agreement in form and substance satisfactory to the Agent within forty-five (45) days of the opening of such account.
- (t) Auditor Change its Auditor unless any replacement is a nationally recognized accounting firm.
- (u) Hedge Arrangements Enter into any Hedge Arrangements except Qualifying Hedge Arrangements in the ordinary course of business to hedge interest rate, foreign exchange and commodity risks.
- (v) Anti-Money Laundering and Anti-Terrorism Finance Laws; Foreign Corrupt Practices Act; Sanctions Laws; Restricted Person The Borrower shall not, and shall not permit any Subsidiary to, (a) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or otherwise violates any Anti-Terrorism Law, Anti-Corruption Law or Sanctions law, (b) cause or permit any of the funds that are used to repay the Obligations to be derived from any unlawful activity with the result that the Agent, any Lender or any Obligor would be in violation of any Applicable Law or (c) use any part of the proceeds of the Credit Facility, directly or indirectly, for any conduct that would cause the representations and warranties in Sections 9.1(ii) and 9.1(jj) to be untrue as if made on the date any such conduct occurs.

**ARTICLE 11****SECURITY****11.1 Form of Security**

On the Closing Date, as continuing collateral security for the payment and satisfaction of all Obligations of the Borrower to the Agent and the Lenders, the Borrower delivered or caused to be delivered to the Agent for itself and on behalf of the Lenders the following Security:

- (i) a general security agreement from the Borrower in favour of the Agent constituting a first-priority Encumbrance (subject only to Permitted Encumbrances) on all of its present and future Property;
- (ii) a securities pledge agreement from the Borrower, in favour of the Agent constituting a first-priority Encumbrance (subject to Permitted Encumbrances) on all Equity Interests that it owns;
- (iii) a limited recourse guarantee from Holdco guaranteeing the due payment and performance to the Agent and the Lenders or any one or more of them of all present and future Obligations of the Borrower to the Agent and the Lenders or any one or more of them;
- (iv) a securities and note pledge agreement from Holdco in favour of the Agent constituting a first-priority Encumbrance (subject to Permitted Encumbrances) on all Equity Interests and Shareholder Subordinated Debt that it owns in the Borrower together with certificates and transfer powers; and
- (v) a guarantee from each Subsidiary of the Borrower guaranteeing the due payment and performance to the Agent and the Lenders of all present and future Obligations of the other Borrower to the Agent and the Lenders or any one or more of them under the Loan Documents;
- (vi) a general security agreement from each Canadian Subsidiary of the Borrower in favour of the Agent constituting a first-priority Encumbrance (subject only to Permitted Encumbrances) on all of its present and future personal Property;
- (vii) a security agreement from each US Subsidiary of the Borrower in favour of the Agent constituting a first-priority Encumbrance (subject only to Permitted Encumbrances) on all of its present and future personal Property;
- (viii) a securities pledge agreement from each Subsidiary of the Borrower in favour of the Agent constituting a first-priority Encumbrance (subject to Permitted Encumbrances) on all Equity Interests that it owns from time to time;

- (ix) an assignment of all policies of insurance from each Obligor with respect to all property and assets, all perils insurance, business interruption insurance and any key man insurance; and
- (x) the landlord consent agreement to the extent contemplated by Section 10.1(n).

## **11.2 After Acquired Property and Further Assurances**

Each Obligor shall from time to time, at the reasonable request of the Agent, execute and deliver all such further deeds or other instruments of conveyance, assignment, transfer, mortgage, pledge or charge in connection with any of its Property, whether now existing or acquired by any Obligor after the date hereof and intended to be subject to the security interests created hereby including any insurance thereon.

## **11.3 Application of Proceeds of Security**

Each of the Lenders acknowledges that the Agent holds the Security to secure all of the Obligations and upon the occurrence of an acceleration of Obligations under Section 12.2, shall distribute the proceeds of realisation in accordance with Section 12.11.

## **11.4 Security Charging Real Property**

Notwithstanding anything to the contrary contained in any Loan Document, to the extent that the charges and security interests created by the Security charge real property or any interest therein such charges and security interests on such real property shall secure interest after the occurrence of an Event of Default at the same rates as those in effect prior to such occurrence.

# **ARTICLE 12**

## **DEFAULT**

### **12.1 Events of Default**

The occurrence of any one or more of the following events (each such event being herein referred to as an “**Event of Default**”) shall constitute a default under this Agreement:

- (i) if the Borrower fails to pay any amount of principal of the Credit Facility when due; or
- (ii) if the Borrower fails to pay any interest, fees or other Obligations under the Loan Documents when due and payable and such non-payment continues for a period of three (3) Business Days; or
- (iii) if the Borrower fails to observe or perform any of the covenants in Sections 10.2 (subject to Section 10.2(g) or 10.2(h)) or 10.3(a) through (e) or 10.4; or

- (iv) if any Obligor or any LRG neglects to observe or perform any covenant or obligation contained in this Agreement or any other Loan Document (other than a covenant or condition whose breach or default in performance is specifically dealt with elsewhere in this Section 12.1) and the Borrower shall fail to remedy such default within thirty (30) days from the date of non-compliance; or
- (v) if any representation or warranty made by any Obligor or any LRG in this Agreement, any Loan Document or in any certificate or other document at any time delivered hereunder to the Agent or the Lenders shall prove to have been incorrect on and as of the date thereof and, to the extent capable of being cured, the Borrower shall have failed to remedy such default within thirty (30) days from the date of the occurrence of such event;
- (vi) if any Obligor ceases to carry on business generally or admits its inability or fails to pay its debts generally; or
- (vii) if any Obligor (i) fails to make any payment when such payment is due and payable to any Person in relation to any Debt (other than Shareholder Subordinated Debt or Permitted Intercompany Debt) which in the aggregate principal amount then outstanding is in excess of \$2,500,000 and such payment is not made within any applicable cure or grace period; (ii) defaults in the observance or performance of any other agreement or condition in relation to any such Debt (other than Shareholder Subordinated Debt, Permitted Intercompany Debt or the Senior Debt) to any Person which in the aggregate principal amount then outstanding is in excess of \$2,500,000 or contained in any instrument or agreement evidencing, securing or relating thereto and such default is not waived or cured within any applicable cure or grace period; or (iii) any other event shall occur or condition exist, the effect of which default or other condition is to cause, or to permit the holder of such Debt (other than Shareholder Subordinated Debt, Permitted Intercompany Debt or the Senior Debt) to cause, such Debt which in the aggregate principal amount then outstanding is in excess of \$1,250,000 to become due prior to its stated maturity date; or
- (viii) if any Obligor or any LRG denies its obligations under any Loan Document or claims any of the Loan Documents to be invalid or withdrawn in whole or in part; or
- (ix) any of the Loan Documents or any material provision of any of them becomes unenforceable, unlawful or is changed in a manner which is adverse to the Agent and the Lenders by virtue of legislation or by a court, statutory board or commission, and if any Obligor does not, within five (5) Business Days of receipt of notice of such Loan Document or material provision becoming unenforceable, unlawful or being changed and being provided with any required new agreement or amendment for execution, replace such Loan Document with a new agreement that is in form and substance satisfactory to the Lenders acting reasonably or

amend such Loan Document to the satisfaction of the Lenders acting reasonably; or

- (x) if a decree or order of a court of competent jurisdiction is entered adjudging an Obligor a bankrupt or insolvent or approving a petition seeking the winding-up of an Obligor under the *Companies' Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada), the *United States Bankruptcy Code* or the *Winding-Up and Restructuring Act* (Canada) or any other bankruptcy, insolvency or analogous laws or issuing sequestration or process of execution against any substantial part of the assets of an Obligor or ordering the winding up or liquidation of its affairs; or
- (xi) if any Obligor becomes insolvent, makes any assignment in bankruptcy or makes any other similar assignment for the benefit of creditors, makes any proposal under the *Bankruptcy and Insolvency Act* (Canada) or any comparable law, seeks relief under the *Companies' Creditors Arrangement Act* (Canada), the *Winding-Up and Restructuring Act* (Canada), the *United States Bankruptcy Code* or any other bankruptcy, insolvency or analogous law, is adjudged bankrupt, files a petition or proposal to take advantage of any act of insolvency, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other Person with similar powers of itself or of all or any substantial portion of its assets, or files a petition or otherwise commences any proceeding seeking any reorganization, arrangement, composition or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors' rights or consents to, or acquiesces in, the filing of such a petition; or
- (xii) if any proceeding or filing shall be instituted or made against any Obligor seeking to have an order for relief entered against such Obligor as debtor or to adjudicate it bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment or composition under any law relating to bankruptcy, insolvency, reorganization or relief or debtors (including, without limitation, the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Winding-Up and Restructuring Act* (Canada) and the *United States Bankruptcy Code*) or seeking appointment of a receiver, trustee, custodian or other similar official for such Obligor or for any substantial part of its properties or assets unless the same is being contested actively and diligently in good faith by appropriate and timely proceedings and is dismissed, vacated or permanently stayed within thirty (30) days of institution; or
- (xiii) if an Encumbrancer takes possession by appointment of a receiver, receiver and manager, or otherwise of any material portion of the Property of any Obligor; or
- (xiv) if an execution, writ of seizure and sale, sequestration or decree for the payment of money due shall have been obtained or entered against an

Obligor in an amount in excess of \$2,500,000 (individually or in the aggregate for all Obligor(s)) and such execution, writ of seizure and sale, sequestration or decree shall not have been and remain vacated, satisfied, discharged or pending appeal within the applicable appeal period stayed within thirty (30) days; or

- (xv) if a final judgement not covered by insurance (exclusive of any deductible) shall have been obtained or entered against an Obligor in an amount in excess of \$2,500,000 (individually or in the aggregate for all Obligor(s)) and such judgement shall not have been and remain vacated, satisfied, discharged or pending appeal within the applicable appeal period stayed within thirty (30) days; or
- (xvi) if any of the Security shall cease to be a valid and perfected first priority security interest subject only to Permitted Encumbrances and the Borrower shall have failed to remedy such default within five (5) Business Days of receipt of notice thereof from the Agent; or
- (xvii) the occurrence of a Material Adverse Effect; or
- (xviii) if a Change of Control shall occur; or
- (xix) the institution of any steps by any Obligor or any applicable regulatory authority to terminate a Canadian Pension Plan if, as a result of such termination, any such Obligor may be required to make an additional contribution to such Canadian Pension Plan or to incur an additional liability or obligation to such Canadian Pension Plan, equal to or in excess of \$2,500,000; or
- (xx) any of the following events shall occur or exist under ERISA with respect to any US Obligor or any member of a Controlled Group: (i) any Reportable Event shall occur; (ii) complete or partial withdrawal from any Multiemployer Plan shall occur; (iii) a notice of intent to terminate a US Pension Plan shall be filed, or a US Pension Plan shall be terminated, in either case, which could reasonably be expected to create material liability for any Obligor; or (iv) circumstances exist which would reasonably be expected to constitute grounds entitling the PBGC to institute proceedings to terminate a US Pension Plan, or the PBGC shall institute such proceedings; and in each case above, such event or condition (together with all other events or conditions identified above), could subject such US Obligor to any tax, penalty or other liability (including on account of its membership in a Controlled Group at the relevant time) which would reasonably be expected to result in an additional liability or obligation in excess of \$3,750,000; or
- (xxi) should [REDACTED] North America elect to terminate the [REDACTED] Contract due to reasons deemed to be the fault of the Borrower; or
- (xxii) should the [REDACTED] PET Line #1 and [REDACTED] Carton Line #4 not be commercially operational by January 31, 2025 and February 28, 2025, respectively; or

- (xxiii) if any report of the Auditor with respect to the Borrower's audited financial statement contains any going concern qualification which is unacceptable to the Lenders acting reasonably.

## **12.2 Acceleration and Termination of Rights**

If any Event of Default shall occur and be continuing, all Obligations owing by the Borrower under the Loan Documents shall, at the option of the Agent, upon the request of the Majority Lenders, become immediately due and payable, with interest thereon, at the rate or rates determined as herein provided, to the date of actual payment thereof, all without notice, presentment, protest, demand, notice of dishonour or any other demand or notice whatsoever, all of which are hereby expressly waived by each Obligor; provided, if any Event of Default described in Section 12.1(x) through (xii) with respect to the Borrower shall occur, the Commitments (if not theretofore terminated) shall automatically terminate and the outstanding principal amount of the Credit Facility and all other Obligations shall automatically be and become immediately due and payable. In such event the Agent may, on behalf of the Lenders, exercise any right or recourse and/or proceed by any action, suit, remedy or proceeding against any Obligor authorized or permitted by law for the recovery of all the Obligations of the Borrower to the Lenders and proceed to exercise any and all rights hereunder and under the Security and no such remedy for the enforcement of the rights of the Lenders shall be exclusive of or dependent on any other remedy but any one or more of such remedies may from time to time be exercised independently or in combination.

## **12.3 [INTENTIONALLY DELETED]**

## **12.4 Remedies Cumulative and Waivers**

For greater certainty, it is expressly understood and agreed that the respective rights and remedies of the Lenders and the Agent hereunder or under any other Loan Document or instrument executed pursuant to this Agreement are cumulative and are in addition to and not in substitution for any rights or remedies provided by law or by equity; and any single or partial exercise by the Lenders or by the Agent of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in this Agreement or other document or instrument executed pursuant to this Agreement shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which any one or more of the Lenders and the Agent may be lawfully entitled for such default or breach. Any waiver by the Lenders or the Agent of the strict observance, performance or compliance with any term, covenant, condition or other matter contained herein and any indulgence granted, either expressly or by course of conduct, by the Lenders or the Agent shall be effective only in the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any rights and remedies of the Lenders or the Agent under this Agreement or any other Loan Document or instrument executed pursuant to this Agreement as a result of any other default or breach hereunder or thereunder.

## **12.5 [INTENTIONALLY DELETED]**

## **12.6 Saving**

The Lenders shall not be under any obligation to the Borrower or any other Person to realize any collateral or enforce the Security or any part thereof or to allow any of the collateral to be sold, dealt with or otherwise disposed of. The Lenders shall not be responsible



or liable to the Obligors or any other Person for any loss or damage upon the realization or enforcement of, the failure to realize or enforce the collateral or any part thereof or the failure to allow any of the collateral to be sold, dealt with or otherwise disposed of or for any act or omission on their respective parts or on the part of any director, officer, agent, servant or adviser in connection with any of the foregoing, except that a Lender may be responsible or liable for any loss or damage arising from the wilful misconduct or negligence of that Lender.

## **12.7      Perform Obligations**

If an Event of Default has occurred and is continuing and if the Borrower has failed to perform any of its covenants or agreements in the Loan Documents, the Majority Lenders, may, but shall be under no obligation to, instruct the Agent on behalf of the Lenders to perform any such covenants or agreements in any manner deemed fit by the Majority Lenders without thereby waiving any rights to enforce the Loan Documents. The reasonable expenses (including any legal costs) paid by the Agent and the Lenders in respect of the foregoing shall be an Obligation and shall be secured by the Security.

## **12.8      Third Parties**

No Person dealing with the Lenders or any agent of the Lenders shall be required to inquire whether the Security has become enforceable, or whether the powers which the Lenders or the Agent are purporting to exercise have been exercisable, or whether any Obligations remain outstanding upon the security thereof, or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made, or otherwise as to the propriety or regularity of any sale or other disposition or any other dealing with the collateral charged by such Security or any part thereof.

## **12.9      Set-Off or Compensation**

If an Event of Default has occurred and is continuing, each of the Lenders and each of their respective Affiliates is hereby authorized at any time and from time to time to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of any Obligor against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender has made any demand under this Agreement or any other Loan Document and although such obligations of the Obligor may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each the Lenders and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff, consolidation of accounts and bankers' lien) that the Lenders or their respective Affiliates may have. Each Lender agrees to promptly notify the Borrower and the Agent after any such setoff and application, but the failure to give such notice shall not affect the validity of such setoff and application. If any Affiliate of a Lender exercises any rights under this Section 12.9, it shall share the benefit received in accordance with Section 14.20 as if the benefit had been received by the Lender of which it is an Affiliate.

**12.10      Realization of Security**

Each of the Lenders acknowledges that the Agent holds the Security to secure all of the Obligations and upon the event of the occurrence of an Event of Default, the Agent shall act on the written instructions of the Majority Lenders as provided in this Agreement and shall distribute the net sale proceeds of realization of the Security to the Lenders in accordance with their Proportionate Share of the Obligations and in accordance with Section 12.11.

**12.11      Application of Payments**

Notwithstanding any other provision of this Agreement, the proceeds of realization of the Security or any portion thereof shall, subject to the Intercreditor Agreement and the TQ Subordination Agreement, be distributed in the following order:

- (a) first, in payment of all costs and expenses incurred by the Agent in connection with such realization, including legal, accounting and receivers' fees and disbursements;
- (b) second, in payment of all costs and expenses incurred by the Lenders in connection with such realization, including legal, accounting and receivers' fees and disbursements;
- (c) third, against the Obligations to each Lender (including, for certainty, the obligations owing to Roynat pursuant to Section 5.9) in accordance with its Proportionate Share; and
- (d) fourth, if all Obligations of the Borrower listed above have been paid and satisfied in full, any surplus proceeds of realization shall be paid to the Borrower unless otherwise required in accordance with Applicable Law.

**12.12      Consultant**

The Borrower agrees that, at any time after the occurrence of and during the continuance of an Event of Default and upon written request delivered by the Agent, it shall appoint a financial consultant (hereinafter referred to as the "**Consultant**") for the purposes of reviewing the operations of the Obligors from time to time thereafter. The terms of the Consultant's scope of duties, including appropriate covenants regarding confidentiality, shall be settled by the Agent with the consent of the Borrower, provided that such terms may be settled by the Agent and the Lenders if agreement with the Borrower is not reached within five (5) days of the date of the Agent's request. The Borrower consents, and shall cause each Obligor to consent, at all times to a free exchange of information or the particulars of any such information exchanged at any time. Should the Senior Lenders appoint a consultant pursuant to the Senior Credit Agreement, the Lenders (x) may not appoint a separate consultant, and (y) should the Lenders have previously appointed a consultant, the Lenders shall cause such consultant to resign.

## ARTICLE 13

### COSTS, EXPENSES AND INDEMNIFICATION

#### **13.1 Indemnification by the Borrower**

(a) The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Agent including the reasonable fees, charges and disbursements for counsel for the Agent, in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all reasonable out-of-pocket expenses incurred by the Agent, or any Lender, including the reasonable fees, charges and disbursements of counsel, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section 13.1, or in connection with the Credit Facility issued hereunder, including all such out-of-pocket expenses incurred during any workout restructuring or negotiations in respect of the Credit Facility.

(b) The Borrower shall indemnify the Agent (and any sub-agent thereof), each Lender and each Related Party of any of the foregoing Persons (each such Person being called an “**Indemnatee**”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnatee, incurred by any Indemnatee or asserted against any Indemnatee by any third party or by any Obligor arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance or non-performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation or non-consummation of the transactions contemplated hereby or thereby, (ii) any advance or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Obligor, or any Environmental Liability related in any way to any Obligor, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by an Obligor and regardless of whether any Indemnatee is a party thereto, provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses (w) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence, fraud or wilful misconduct of an Indemnatee, (x) result from a claim brought by the Borrower or any other Obligor against an Indemnatee for breach in bad faith of such Indemnatee’s obligations hereunder or under any other Loan Document, if the Obligor has obtained a final and non-appealable judgment in its favour on such claim as determined by a court of competent jurisdiction, or (y) have resulted solely from a dispute among Indemnitees that does not involve an act or omission by the Borrower or any other Obligor (other than any claims against an Indemnatee in its capacity or in fulfilling its role as an administrative agent or arranger or any similar role under this Agreement), or (z) in respect of matters specifically addressed in Sections 15.1, 15.2 and 13.1(a). Notwithstanding the foregoing, this Section 13.1 shall not apply with respect to Taxes other than Taxes that represent losses, liability, claims, and damages arising from any non-Tax claim. The indemnity contained herein shall survive the termination of the Commitments.

**13.2        Reimbursement by Lenders**

To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under Section 13.1 to be paid by them to the Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's Proportionate Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent (or any such sub-agent) or against any Related Party of any of the foregoing acting for the Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this Section 13.2 are subject to the other provisions of this Agreement concerning several liability of the Lenders.

**13.3        Waiver of Consequential Damages**

To the fullest extent permitted by Applicable Law, the Obligors shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for indirect, consequential, punitive, aggravated or exemplary damages (as opposed to direct damages) arising out of, in connection with, or as a result of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby (or any breach thereof), the transactions contemplated hereby or thereby, the Credit Facility or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

**13.4        Payments**

All amounts due under this Section shall be payable promptly after demand therefor. A certificate of the Agent or a Lender setting forth the amount or amounts owing to the Agent, Lender or a sub-agent or Related Party, as the case may be, as specified in this Section, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrower shall be conclusive absent manifest error.

**ARTICLE 14****THE AGENT AND THE LENDERS****14.1        Appointment and Authority**

Each of the Lenders hereby irrevocably appoints Roynat as the Agent to act on its behalf as the Agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agent and the Lenders, and no Obligor shall have rights as a third party beneficiary of any of such provisions.

## **14.2 Rights as a Lender**

The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Obligor or any Affiliate thereof as if such Person were not the Agent and without any duty to account to the Lenders.

## **14.3 Exculpatory Provisions**

(a) The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agent:

- (i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
- (ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents), but the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or Applicable Law; and
- (iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the person serving as the Agent or any of its Affiliates in any capacity.

(b) The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Majority Lenders (or such other number or percentage of the Lenders as is necessary, or as the Agent believes in good faith is necessary, under the provisions of the Loan Documents) or (ii) in the absence of its own gross negligence or wilful misconduct. The Agent shall be deemed not to have knowledge of any Default unless and until notice describing the Default is given to the Agent by the Borrower or a Lender.

(c) Except as otherwise expressly specified in this Agreement the Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the

satisfaction of any condition specified in this Agreement, other than to confirm receipt of items expressly required to be delivered to the Agent.

#### **14.4            Reliance by Agent**

The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of the advance that by its terms must be fulfilled to the satisfaction of a Lender, the Agent may presume that such condition is satisfactory to such Lender unless the Agent shall have received notice to the contrary from such Lender prior to the making of such advance. The Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

#### **14.5            Indemnification of Agent**

Each Lender agrees to indemnify the Agent and hold it harmless (to the extent not reimbursed by the Borrower), rateably according to its Proportionate Share (and not jointly or jointly and severally) from and against any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel, which may be incurred by or asserted against the Agent in any way relating to or arising out of the Loan Documents or the transactions therein contemplated. However, no Lender shall be liable for any portion of such losses, claims, damages, liabilities and related expenses resulting from the Agent's gross negligence or wilful misconduct.

#### **14.6            Delegation of Duties**

The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Agent from among the Lenders (including the Person serving as Agent) and their respective Affiliates. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The provisions of this Article and other provisions of this Agreement for the benefit of the Agent shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facility provided for herein as well as activities as Agent.

#### **14.7            Replacement of Agent**

(a) The Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Majority Lenders shall have the right in consultation with the Borrower, to appoint a successor, which shall be a Lender with an office in Toronto, Ontario, or an Affiliate of any such Lender with an office in Toronto, Ontario. The Agent may also be removed at any time by the Majority Lenders upon thirty (30) days' notice to the Agent and the Borrower as long as the Majority Lenders, in consultation with the Borrower, appoint and obtain the acceptance of a successor within such thirty (30) days, which

shall be a Lender with an office in Toronto, Ontario, or an Affiliate of any such Lender with an office in Toronto, Ontario.

(b) If no such successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within thirty (30) days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent meeting the qualifications specified in Section 14.1, provided that if the Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time as the Majority Lenders appoint a successor Agent as provided for above in the preceding paragraph.

(c) Upon a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the former Agent, and the former Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided in the preceding paragraph). The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the termination of the service of the former Agent, the provisions of this Article 14 and of Article 13 shall continue in effect for the benefit of such former Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the former Agent was acting as Agent.

#### **14.8            Non-Reliance on Agent and Other Lenders**

Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

#### **14.9            Collective Action of the Lenders**

Each of the Lenders hereby acknowledges that to the extent permitted by Applicable Law, any collateral security and the remedies provided under the Loan Documents to the Lenders are for the benefit of the Lenders collectively and acting together and not severally and further acknowledges that its rights hereunder and under any collateral security are to be exercised not severally, but by the Agent upon the decision of the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents). Accordingly, notwithstanding any of the provisions contained herein or in any collateral security, each of the Lenders hereby covenants and agrees that it shall not be entitled to take any action hereunder or thereunder including, without limitation, any declaration of

default hereunder or thereunder but that any such action shall be taken only by the Agent with the prior written agreement of the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents). Each of the Lenders hereby further covenants and agrees that upon any such written agreement being given, it shall co-operate fully with the Agent to the extent requested by the Agent. Notwithstanding the foregoing, in the absence of instructions from the Lenders and where in the sole opinion of the Agent, acting reasonably and in good faith, the exigencies of the situation warrant such action, the Agent may without notice to or consent of the Lenders take such action on behalf of the Lenders as it deems appropriate or desirable in the interest of the Lenders.

#### **14.10      No Other Duties, etc.**

Anything herein to the contrary notwithstanding, none of the “bookrunners”, “arrangers” or holders of similar titles, if any, specified in this Agreement shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Agent or a Lender hereunder.

#### **14.11      Payments by the Borrower**

Prior to an Event of Default that is continuing, all payments made by or on behalf of the Borrower pursuant to this Agreement will be made to and received by the Agent on behalf of the Lenders and will be distributed by the Agent to the Lenders as soon as possible upon receipt by the Agent. Subject to Sections 8.2 and 12.11, unless otherwise specified herein, the Agent will distribute to the Lenders in accordance with each Lender’s Proportionate Share:

- (a) payments of interest and fees;
- (b) costs and expenses;
- (c) repayments of principal;
- (d) prepayments of principal;
- (e) amounts received by the exercise of any right of set-off, consolidation of accounts, or by counterclaim or cross-action; and
- (f) all other payments received by the Agent.

#### **14.12      Knowledge and Required Action**

The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default (other than the non-payment of any principal, interest or other amount to the extent the same is required to be paid to the Agent for the account of the Lenders) unless the Agent has received notice from a Lender or the Borrower specifying such Default or Event of Default and stating that such notice is given pursuant to this Section. In the event that the Agent receives such a notice, it shall give prompt notice thereof to the Lenders, and shall also give prompt notice to the Lenders of each non-payment of any amount required to be paid to the Agent for the account of the Lenders. The Agent shall, subject to Section 14.13 take such action with respect to such Default or Event of Default as shall be directed by the Lenders in accordance with this Article 14 provided that, unless and until the Agent shall have received such direction the Agent may, but shall not be obliged to, take such



action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interest of the Lenders; and provided further that the Agent in any case shall not be required to take any such action which it determines to be contrary to the Loan Documents or to any Applicable Law.

#### **14.13      Request for Instructions**

The Agent may at any time request instructions from the Lenders with respect to any actions or approvals which, by the terms of any of the Loan Documents, the Agent is permitted or required to take or to grant, and the Agent shall be absolutely entitled to refrain from taking any such action or to withhold any such approval and shall not be under any liability whatsoever as a result thereof until it shall have received such instructions from the Lenders. No Lender shall have any right of action whatsoever against the Agent as a result of the Agent acting or refraining from acting under the Loan Documents in accordance with instructions from the Lenders. The Agent shall in all cases be fully justified in failing or refusing to take or continue any action under the Loan Documents unless it shall have received further assurances to its satisfaction from the Lenders of their indemnification obligations under Section 14.5 against any and all liability and expense which may be incurred by it by reason of taking or continuing to take such action, and unless it shall be secured in respect thereof as it may deem appropriate.

#### **14.14      Actions by Lenders**

(a) Any consent, approval (including without limitation any approval of or authorization for any amendment to any of the Loan Documents), instruction or other expression of the Lenders under any of the Loan Documents may be obtained by an instrument in writing signed in one or more counterparts by the Majority Lenders, or where required by Section 14.14(c) all of the Lenders (which instrument in writing, for greater certainty, may be delivered by facsimile or other electronic transmission).

(b) Any consent, approval (including without limitation any approval of or authorization for any amendment to any of the Loan Documents), instruction or other expression of the Lenders hereunder may also be included in a resolution that is submitted to a meeting or adjourned meeting of the Lenders duly called and held for the purpose of considering the same as hereinafter provided and shall be deemed to have been obtained if such resolution is passed by the affirmative vote of the Majority Lenders (or 100% in the event that there are only two Lenders) of the votes given on a poll of the Lenders with respect to such resolution. A meeting of Lenders may be called by the Agent and shall be called by the Agent upon the request of any two Lenders. Every such meeting shall be held in the City of Toronto or at such other reasonable place as the Agent may approve. At least seven (7) days' notice of the time and place of any such meeting shall be given to the Lenders and shall include or be accompanied by a draft of the resolutions to be submitted to such meeting, but the notice may state that such draft is subject to amendment at the meeting or any adjournment thereof. The Lenders who are present in person or by proxy at the time and place specified in the notice shall constitute a quorum. A person nominated in writing by the Agent shall be chairman of the meeting. Lenders representing no less than 60% of the outstanding advances must be present at a meeting or adjourned meeting. Upon every poll taken at any such meeting every Lender who is present in person or represented by a proxy duly appointed in writing (who need not be a Lender) shall be entitled to one vote in respect of each \$1 of its Commitment. In respect of all matters concerning the convening, holding and adjourning of Lenders' meetings, the form, execution and deposit of instruments appointing proxies and all other relevant matters, the Agent may

from time to time make such reasonable regulations not inconsistent with this subsection 14.14(b) as it shall deem expedient and any regulations so made by the Agent shall be binding upon the Borrower, the Agent and the Lenders.

(c) Notwithstanding subsection 14.14(a), without the consent of all the Lenders the Agent may not take the following actions:

- (i) amend, modify, discharge, terminate or waive any of the terms of this Agreement if such amendment, modification, discharge, termination or waiver would increase the amount of the Credit Facility, reduce the fees payable, reduce interest rates or other amounts payable with respect to the Credit Facility, extend any date fixed for payment of principal, interest or other amounts payable relating to the Credit Facility, extend the repayment date of the Credit Facility or change the definition of Majority Lenders;
- (ii) amend, modify, discharge, terminate or waive any of the Security (including a guarantee) if the effect is to release a material part of the Property subject thereto otherwise than pursuant to, or as permitted by, the terms hereof or thereof; or
- (iii) amend this Section 14.14(c).

(d) An instrument in writing from the Majority Lenders (any such instrument in writing being an “**Approval Instrument**”) shall (subject to the terms of Section 14.14(c)) be binding upon all of the Lenders, and the Agent (subject to the provisions for its indemnity contained in this Agreement) shall be bound to give effect thereto accordingly. For greater certainty, to the extent so authorized in the Approval Instrument, the Agent shall be entitled (but not obligated) to execute and deliver on behalf of the Agent and all of the Lenders, without the requirement for the execution by any other Lender or Lenders, any consents, waivers, documents or instruments (including without limitation any amendment to any of the Loan Documents) necessary or advisable in the opinion of the Agent to give effect to the matters approved by the Majority Lenders or all of the Lenders, as the case may be, in any Approval Instrument.

(e) In the event that in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 14.14(c), the consent of the Majority Lenders shall have been obtained but the consent of one or more of such other Lenders (each a “**Non Consenting Lender**”) whose consent is required shall not have been obtained; then, with respect to each Non Consenting Lender (the “**Terminated Lender**”) the Borrower may, by giving written notice to the Agent and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding advances in full to one or more Eligible Assignees (each a “**Replacement Lender**”) in accordance with the provisions of this Agreement and the Borrower shall pay the fees, if any, payable thereunder in connection with any assignment from the Non Consenting Lender; provided:

- (i) on the date of such assignment, the Replacement Lender shall pay to the Terminated Lender an amount equal to the sum of (a) an amount equal to the principal of, and all accrued interest on, the outstanding advances of the Terminated Lender, and (b) an amount equal to all accrued, but

theretofore unpaid fees owing to such Terminated Lender pursuant to this Agreement; and

- (ii) each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non Consenting Lender;

Upon the prepayment of all amounts owing to any Terminated Lender, such Terminated Lender shall no longer constitute a "Lender" for purposes hereof; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender. Should there not be Replacement Lenders available to take an assignment of the outstanding advances, the Borrower shall be entitled to repay in full the Non Consenting Lender from proceeds derived exclusively from the issuance of Equity Interests or the incurrence by the Borrower of Shareholder Subordinated Debt.

(f) The Agent is authorized, without further action by the Lenders, to release the Security and execute related documents in connection with a Permitted Disposition to the extent relating to the property subject to such disposition.

#### **14.15      Provisions for Benefit of Lenders Only**

The provisions of this Article 14, other than this Section 14.15, Section 14.7, Section 14.14(e) and the rights of the Borrower to receive notice as specified in this Article 14 relating to the rights and obligations of the Lenders and the Agent *inter se* shall be operative as between the Lenders and the Agent only, and the Obligors shall not have any rights under or be entitled to rely for any purposes upon such provisions.

#### **14.16      Payments by Agent**

(a) For greater certainty, the following provisions shall apply to any and all payments made by the Agent to the Lenders hereunder:

- (i) the Agent shall be under no obligation to make any payment (whether in respect of principal, interest, fees or otherwise) to any Lender until an amount in respect of such payment has been received by the Agent from the Borrower;
- (ii) if the Agent receives less than the full amount of any payment of principal, interest, fees or other amount owing by the Borrower under this Agreement, then subject to Section 8.2 the Agent shall have no obligation to remit to each Lender any amount other than such Lender's Proportionate Share of that amount which is the amount actually received by the Agent;
- (iii) if any Lender advances more or less than its Proportionate Share of Credit Facility, such Lender's entitlement to such payment shall be increased or reduced, as the case may be, in proportion to the amount actually advanced by such Lender;
- (iv) the Agent acting reasonably and in good faith shall, after consultation with the Lenders in the case of any dispute, determine in all cases the amount

of all payments to which each Lender is entitled and such determination shall, in the absence of manifest error, be binding and conclusive;

- (v) the Agent shall be entitled to round any Lender's Proportionate Share of mandatory or scheduled repayments to the nearest \$1,000;
- (vi) upon request, the Agent shall deliver a statement detailing any of the payments to the Lenders referred to herein; and
- (vii) all payments by the Agent to a Lender hereunder shall be made to such Lender at its address set forth in the signature pages on this Agreement or on the applicable Assignment and Assumption unless notice to the contrary is received by the Agent from such Lender.

(b) Unless the Agent has actual knowledge that the Borrower has not made or will not make a payment to the Agent for value on the date in respect of which the Borrower has notified the Agent that the payment will be made and except to the extent that the Agent has received notice under Section 8.2, the Agent shall be entitled to assume that such payment has been or will be received from the Borrower when due and the Agent may (but shall not be obliged to), in reliance upon such assumption, pay the Lenders corresponding amounts. If the payment by the Borrower is in fact not received by the Agent on the required date and the Agent has made available corresponding amounts to the Lenders, the Borrower shall, without limiting its other obligations under this Agreement, indemnify the Agent against any and all liabilities, obligations, losses (other than loss of profit), damages, penalties, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on or incurred by the Agent as a result. A certificate of the Agent with respect to any amount owing by the Borrower under this Section shall be *prima facie* evidence of the amount owing in the absence of manifest error.

#### **14.17 Acknowledgements, Representations and Covenants of Lenders**

(a) Each Lender represents and warrants that it has the legal capacity to enter into this Agreement pursuant to its charter and any applicable legislation and has not violated its charter, constating documents or any applicable legislation by so doing.

(b) Each of the Lenders acknowledges and confirms that in the event that the Agent does not receive payment in accordance with this Agreement, it shall not be the obligation of the Agent to maintain the Credit Facility in good standing nor shall any Lender have recourse to the Agent in respect of any amounts owing to such Lender under this Agreement.

(c) Each Lender acknowledges and agrees that its obligation to advance its Proportionate Share of the advances in accordance with the terms of this Agreement is independent and in no way related to the obligation of any other Lender hereunder.

(d) Each Lender hereby acknowledges receipt of a copy of this Agreement and acknowledges that it is satisfied with the form and content of such documents.

(e) Except to the extent recovered by the Agent from the Borrower, promptly following demand therefor, each Lender shall pay to the Agent an amount equal to such Lender's Proportionate Share of any and all reasonable costs, expenses, claims, losses and

liabilities incurred by the Agent in connection with this Agreement except for those incurred by reason of the Agent's negligence or wilful misconduct.

(f) Each Lender shall respond promptly to each request by the Agent for the consent of such Lender required hereunder.

(g) Each Lender that assigns all or a portion of its rights and obligations under this Agreement shall pay to the Agent a processing and recordation fee of \$3,500 with respect to each such assignment in accordance with Section 16.2(e).

#### **14.18 Rights of Agent**

(a) In administering the Credit Facility, the Agent may retain, at the expense of the Lenders if such expenses are not recoverable from the Borrower, such solicitors, counsel, auditors and other experts and agents as the Agent may select, in its sole discretion, acting reasonably and in good faith after consultation with the Lenders.

(b) The Agent shall be entitled to rely on any communication, instrument or document believed by it to be genuine and correct and to have been signed by the proper individual or individuals, and shall be entitled to rely and shall be protected in relying as to legal matters upon opinions of independent legal advisors selected by it. The Agent may also assume that any representation made by the Borrower is true and that no Default or Event of Default has occurred unless the officers or employees of the Lender acting as Agent, active in their capacity as officers or employees responsible for the Borrower's account, have actual knowledge to the contrary or have received notice to the contrary from any other party to this Agreement.

(c) Except in its own right as a Lender, the Agent shall not be required to advance its own funds for any purpose, and in particular, shall not be required to pay with its own funds insurance premiums, taxes or public utility charges or the cost of repairs or maintenance with respect to the assets which are the subject matter of the Security, nor shall it be required to pay with its own funds the fees of solicitors, counsel, auditors, experts or agents engaged by it as permitted hereby.

(d) The Agent shall be entitled to scan and provide by email to the Lenders all financial information it receives from the Borrower pursuant to Section 10.3.

#### **14.19 [INTENTIONALLY DELETED]**

#### **14.20 Sharing of Payments by Lenders**

If any Lender, by exercising any right of setoff or counterclaim or otherwise, obtains any payment or other reduction that might result in such Lender receiving payment or other reduction of a proportion of the aggregate amount of its advances and accrued interest thereon or other obligations hereunder greater than its *pro rata* share thereof as provided herein, then the Lender receiving such payment or other reduction shall (a) notify the Agent of such fact, and (b) purchase (for cash at face value) participations in the advances and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders rateably in accordance with the aggregate amount of principal of and accrued interest on their respective advances and other amounts owing them, provided that:

- (a) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest;
- (b) the provisions of this Section shall not be construed to apply to (x) any payment made by any Obligor pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its advances, other than to any Obligor or any Affiliate of an Obligor (as to which the provisions of this Section shall apply); and
- (c) the provisions of this Section shall not be construed to apply to (w) any payment made while no Event of Default has occurred and is continuing in respect of obligations of the Borrower to such Lender that do not arise under or in connection with the Loan Documents, (x) any payment made in respect of an obligation that is secured by a Permitted Encumbrance or that is otherwise entitled to priority over the Borrower's obligations under or in connection with the Loan Documents, (y) any reduction arising from an amount owing to an Obligor upon the termination of derivatives entered into between the Obligor and such Lender, or (z) any payment to which such Lender is entitled as a result of any form of credit protection obtained by such Lender.

#### **14.21      Agent's Clawback**

(a)      Funding by Lenders: Presumption by Agent Unless the Agent shall have received notice from a Lender prior to the proposed date of any advance of funds that such Lender will not make available to the Agent such Lender's share of such advance, the Agent may assume that such Lender has made such share available on such date in accordance with the provisions of this Agreement concerning funding by Lenders and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event if a Lender has not in fact made its share of the applicable advance available to the Agent, then the applicable Lender shall pay to the Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Agent, at a rate determined by the Agent in accordance with prevailing banking industry practice on Interbank compensation. If such Lender pays such amount to the Agent, then such amount shall constitute such Lender's advance included in such advance. If the Lender does not do so forthwith, the Borrower shall pay to the Agent forthwith on demand such corresponding amount with interest thereon at the interest rate applicable to the advance in question. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that has failed to make such payment to the Agent.

(b)      Payments by Borrower: Presumptions by Agent Unless the Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Agent for the account of any Lender hereunder that the Borrower will not make such payment the Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute the amount due to the Lenders. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is

distributed to it to but excluding the date of payment to the Agent, at a rate determined by the Agent in accordance with prevailing banking industry practice on Interbank compensation.

#### **14.22        Erroneous Payments**

(a) Each Lender hereby agrees that (i) if the Agent notifies such Lender that the Agent has determined in its sole discretion that any funds received by such Lender from the Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Lender (whether or not known to such Lender) (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, an “**Erroneous Payment**”) and demands the return of such Erroneous Payment (or a portion thereof), such Lender shall promptly, but in no event later than one (1) Business Day thereafter, return to the Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation from time to time in effect and (ii) to the extent permitted by applicable law, such Lender shall not assert any right or claim to the Erroneous Payment, and hereby waives, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent for the return of any Erroneous Payments received, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine. A notice of the Agent to any Lender under this Section 14.22(a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding Section 14.22(a), each Lender hereby further agrees that if it receives an Erroneous Payment from the Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Agent (or any of its Affiliates) with respect to such Erroneous Payment (an “**Erroneous Payment Notice**”), (y) that was not preceded or accompanied by an Erroneous Payment Notice, or (z) that such Lender otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), in each case, an error has been made (and that it is deemed to have knowledge of such error at the time of receipt of such Erroneous Payment) with respect to such Erroneous Payment, and to the extent permitted by applicable law, such Lender shall not assert any right or claim to the Erroneous Payment, and hereby waives, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent for the return of any Erroneous Payments received, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine. Each Lender agrees that, in each such case, it shall promptly (and, in all events, within one (1) Business Day of its knowledge (or deemed knowledge) of such error) notify the Agent of such occurrence and, upon demand from the Agent, it shall promptly, but in all events no later than one (1) Business Day thereafter, return to the Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(c) The Borrower and each other Obligor hereby agrees that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Lender that has received such Erroneous Payment (or portion thereof) for any reason, the Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by a Borrower or any other Obligor.

(d) Each party's obligations under this Section 14.22 shall survive the resignation or replacement of the Agent, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

## ARTICLE 15

### TAXES AND CHANGE OF CIRCUMSTANCES

#### **15.1      Increased Costs**

- (a) Increased Costs Generally If, from time to time, any Change in Law shall:
- (i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;
  - (ii) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement or any advance made by it, or change the basis of taxation of payments to such Lender in respect thereof, except for Indemnified Taxes or Other Taxes covered by Section 15.2 and the imposition, or any change in the rate, of any Excluded Tax payable by such Lender, or
  - (iii) impose on any Lender or any applicable interbank market any other condition, cost or expense affecting this Agreement or the advance made by such Lender or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any advance, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount), then upon request of such Lender from time to time, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

Notwithstanding anything contained in this Agreement, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof and (ii) all requests, rules, regulations, guidelines or directives whether concerning capital adequacy or liquidity promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall, in each case, be deemed a "Change in Law" regardless of the date enacted, adopted, applied or issued.



(b) Capital and Liquidity Requirements If any Lender determines in its sole and absolute discretion, that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the advances made by such Lender, to a level below that which such Lender or its holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of its holding company with respect to, as applicable, capital adequacy or liquidity requirements), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or its holding company for any such reduction suffered.

(c) Certificates for Reimbursement A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrower from time to time shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation, except that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered (i) more than six months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefore, unless the Change in Law giving rise to such increased costs or reductions is retroactive, in which case the six -month period referred to above shall be extended to include the period of retroactive effect thereof, and (ii) for which the Lender is not seeking similar compensation from similar borrowers.

## **15.2            Taxes**

(a) Payments Subject to Taxes Any and all payments by or on account of any obligations of any Obligor hereunder or under any Loan Document shall be made without deduction or withholding for any Taxes except as required by Applicable Law. If any Obligor, the Agent or any Lender is required by Applicable Law to deduct or withhold any Taxes in respect of any payment by or on account of any obligation of an Obligor hereunder or under any other Loan Document, then (i) if such Tax is an Indemnified Tax (including any Other Tax), the sum payable shall be increased by that Obligor when payable as necessary so that after making or allowing for all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section) the Agent or Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions or withholdings been required, (ii) the applicable Withholding Agent shall be entitled to make any such deductions or withholdings required to be made by it under Applicable Law and (iii) the applicable Withholding Agent shall timely pay the full amount required to be deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law.

(b) Payment of Other Taxes by the Borrower Without limiting the provisions of paragraph (a) above, the Obligors shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Agent, timely reimburse it for the payment of, any Other Taxes.

(c) Indemnification by the Borrower The Borrower shall, indemnify the Agent and each Lender, within ten (10) days after written demand therefor (specifying in reasonable detail the nature and the amount of the Indemnified Taxes or Other Taxes), for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted on payments to, or paid by, the Agent or such Lender in respect of any payment by or on account of any obligation of an Obligor hereunder or any other Loan Document and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Evidence of Payments As soon as practicable after any payment of Indemnified Taxes or Other Taxes by an Obligor to a Governmental Authority, the Obligor shall deliver to the Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Agent.

(e) Treatment of Certain Refunds and Tax Reductions If the Agent or a Lender determines that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which an Obligor has paid additional amounts pursuant to this Section or that, because of the payment of such Taxes or Other Taxes, it has benefited from a reduction in Excluded Taxes otherwise payable by it, it shall pay to the Borrower or Obligor, as applicable, an amount equal to such refund or reduction (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower or Obligor under this Section with respect to the Taxes or Other Taxes giving rise to such refund or reduction), net of all out-of-pocket expenses of the Agent or such Lender, as the case may be, and without interest (other than any net after-Tax interest paid by the relevant Governmental Authority with respect to such refund). The Borrower or Obligor as applicable, upon the request of the Agent or such Lender, agrees to repay the amount paid over to the Borrower or Obligor (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Agent or such Lender if the Agent or such Lender is required to repay such refund or reduction to such Governmental Authority. Notwithstanding anything to the contrary in this Section 15.2(e), in no event will the Agent or any Lender be required to pay any amount to the Borrower or an Obligor pursuant to this Section 15.2(e) the payment of which would place such Agent or Lender in a less favourable after-Tax position than such Agent or Lender would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payment or additional amounts with respect to such Tax had been paid. This paragraph shall not be construed to require the Agent or any Lender to make available its tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrower or any other Person, to arrange its affairs in any particular manner or to claim any available refund or reduction.

(f) Status of Lenders To the extent that withholdings apply to any payment to be made to a Lender, any Lender that is entitled to an exemption from or reduction of any withholding Tax with respect to any payments hereunder or under any other Loan Document shall, to the extent it may lawfully do so, deliver to the Borrower and to the Agent, at the time or times reasonably requested by the Borrower or the Agent and at the time or times prescribed by Applicable Law, such properly completed and executed documentation reasonably requested by the Borrower or the Agent or prescribed by Applicable Law as will permit such payments to be

made without withholding (including FATCA withholding, if applicable) or at a reduced rate of withholding. In addition, any Lender, if required by the Borrower or the Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or Agent as will enable the Borrower or the Agent to determine whether or not such Lender is subject to withholding, backup withholding or information reporting requirements. Each Lender shall, from time to time after the initial delivery by such Lender of the forms described above, at the request of the Agent or the Borrower or if any form or certification it previously delivered expires or becomes obsolete or inaccurate, (a) deliver to the Borrower and the Agent renewals, amendments or additional or successor forms, together with any other certificate or statement of exemption required in order to confirm or establish such Lender's status or that such Lender is entitled to an exemption from or reduction in withholding tax or (b) notify the Agent and the Borrower in writing of its inability to deliver any such forms, certificates or other evidence.

(g) Indemnification by the Lenders Each Lender shall severally indemnify the Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Obligors have not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of Obligors to do so), and (ii) any Taxes (other than Indemnified Taxes) attributable to such Lender, in each case, that are payable or paid by the Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Agent to the Lender from any other source against any amount due to the Agent under this paragraph (7).

(h) Survival Each party's obligations under this Section 15.2 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge or all obligations under any Loan Document.

### **15.3 Mitigation Obligations: Replacement of Lenders**

(a) Designation of a Different Lending Office If any Lender requests compensation under Section 15.1, or requires the Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 15.2, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its advances hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 15.1 or 15.2, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders If any Lender requests compensation under Section 15.1, if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 15.2, if any Lender's obligations are suspended pursuant to Section 15.4 or if any Lender defaults in its obligation to fund its advances hereunder, then the Borrower may, at its sole expense and effort, upon ten (10) days' notice to such Lender and the Agent, require such Lender to assign and delegate,

without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Article 16), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

- (i) the Borrower pays the Agent the assignment fee specified in Section 16.2(e);
- (ii) the assigning Lender receives payment of an amount equal to the outstanding principal of its advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);
- (iii) in the case of any such assignment resulting from a claim for compensation under Section 15.1 or payments required to be made pursuant to Section 15.2, such assignment will result in a reduction in such compensation or payments thereafter; and
- (iv) such assignment does not conflict with Applicable Law.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

#### **15.4      Illegality**

If any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make or maintain any advances, or to determine or charge interest rates based upon any particular rate, then, on notice thereof by such Lender to the Borrower through the Agent, any obligation of such Lender with respect to the activity that is unlawful shall be suspended until such Lender notifies the Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Agent), prepay in order to avoid the activity that is unlawful. Upon any such prepayment, the Borrower shall also pay accrued interest on the amount so prepaid. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

### **ARTICLE 16**

#### **SUCCESSORS AND ASSIGNS AND ADDITIONAL LENDERS**

##### **16.1      Successors and Assigns Generally**

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Obligor may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Agent and each Lender and no Lender may assign or otherwise

transfer any of its rights or obligations, hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 16.2, (ii) by way of participation in accordance with the provisions of Section 16.4, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 16.5 (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

## **16.2      Assignment by Lenders**

Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its advances at the time owing to it); provided that:

- (a) except if an Event of Default has occurred and is continuing or in the case of an assignment of the entire remaining amount of the assigning Lender's remaining advances at the time owing to it or in the case of an assignment to a Lender, the principal outstanding balance of the advances of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$2,000,000 (unless the amount owing to such Lender under the applicable Credit Facility is less than \$2,000,000), unless each of the Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents to a lower amount (each such consent not to be unreasonably withheld or delayed);
- (b) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the advance assigned; except that this clause (2) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate credits on a non-*pro rata* basis;
- (c) any assignment must be approved by the Agent (such approval not to be unreasonably withheld or delayed);
- (d) any assignment must be approved by the Borrower acting reasonably (such approval not to be unreasonably delayed; provided that such approval shall not be considered to have been unreasonable withheld, if as a result of such approval, the Borrower would be required to pay an additional amount pursuant to Article 15) unless (A) the proposed assignee is already a Lender, or (B) an Event of Default has occurred and is continuing; and
- (e) the parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee in an amount specified elsewhere in this Agreement and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Agent pursuant to Section 16.3, from and after the Closing Date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement and the other Loan Documents, including any collateral security, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Article 13 and Article 15, and shall continue to be liable for any breach of this Agreement by such Lender, with respect to facts and circumstances occurring prior to the Closing Date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph (other than a participation described in Section 16.4) shall be null and void as against the Borrower. Any payment by an assignee to an assigning Lender in connection with an assignment or transfer shall not be or be deemed to be a repayment by the Borrower or a new advance to the Borrower.

### **16.3        Register**

The Agent shall maintain at one of its offices in Toronto, Ontario or Montreal, Quebec a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the advances owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

### **16.4        Participations**

(a) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Agent, sell participations to any Person (other than a natural person, an Obligor or any Affiliate of an Obligor) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the advances owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any payment by a Participant in connection with a sale of a participation shall not be or be deemed to be a repayment by the Borrower or a new advances to the Borrower.

(b) The voting rights of any Participants shall (i) be limited to matters in respect of (a) increases in Commitments of such Participant, (b) reductions of principal, interest or fees payable to such Participant, (c) extensions of final maturity or scheduled amortization of the advances in which such Participant participates and (d) releases of all or substantially all of the value of the guarantees, or all or substantially all of the collateral (other than in accordance with Section 17.17) and (ii) for clarification purposes, not include the right to vote on waivers of Defaults or Events of Default.

(c) A Participant: (i) shall comply with the requirements of Section 15.2(f) as if it were a Lender, and (ii) shall not be entitled to receive any greater payment under Section 15.1 or 15.2 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant.

#### **16.5 Certain Pledges**

Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under the Agreement to secure obligations of such Lender, but no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

### **ARTICLE 17**

#### **GENERAL**

#### **17.1 Exchange and Confidentiality of Information**

The Borrower authorizes and consents to the reproduction, disclosure and use by the Agent and Lenders of information about the Borrower (including, without limitation, the Borrower's name and any identifying logos) and the transactions herein contemplated to enable the Agent and/or the Lenders to publish promotional "tombstones" and other forms of notices of the transactions contemplated herein in any manner and in any media (including, without limitation, brochures) and the reproduction, disclosure and use of such information shall be subject to the prior approval of the Borrower acting reasonably. The Borrower acknowledges and agrees that no compensation will be payable by the Agent or any Lender resulting therefrom, and that the Agent and the Lender shall have no liability whatsoever to the Borrower or any of its employees, officers, directors, affiliates or shareholders in obtaining and using such information in accordance with the terms hereof.

#### **17.2 Nature of Obligations under this Agreement**

(a) The obligations of each Lender and of the Agent under this Agreement are several and not joint and several. The failure of any Lender to carry out its obligations hereunder shall not relieve the other Lenders, the Agent or the Borrower of any of their respective obligations hereunder. Neither the entering into of this Agreement nor the completion of any transactions contemplated herein shall constitute the Lenders a partnership.

(b) Neither the Agent nor any Lender shall be responsible for the obligations of any other Lender hereunder.

#### **17.3 Addresses, Etc. for Notices**

(a) The addresses and telecopier numbers for the purposes of notices and other communications to the Borrower and the Agent are set out on the signatures pages and Schedules to this Agreement.

(b) Notices Generally Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 17.3(c)), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier

to the addresses or telecopier numbers specified elsewhere in this Agreement or, if to a Lender, to it at its address or telecopier number specified in the Register or, if to an Obligor other than the Borrower, in care of the Borrower.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given on a business day between 9:00 a.m. and 5:00 p.m. local time where the recipient is located, shall be deemed to have been given at 9:00 a.m. on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in Section 17.3(c) below shall be effective as provided in Section 17.3(c).

(c) Electronic Communications Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent. The Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Agent otherwise prescribes, (i) notices and other communications sent to an email address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(d) Change of Address, Etc. Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

#### **17.4 Governing Law and Submission to Jurisdiction**

(a) Governing Law This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein.

(b) Submission to Jurisdiction Each Obligor irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the courts of the Province of Ontario, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Obligor or its properties in the courts of any jurisdiction.



(c) Waiver of Venue Each Obligor irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in 17.4(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

## **17.5 Judgment Currency**

(a) If for the purpose of obtaining or enforcing judgment against the Borrower or any Obligor in any court in any jurisdiction, it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 17.5 referred to as the “**Judgment Currency**”) an amount due in Canadian Dollars or United States Dollars under this Agreement, the conversion shall be made at the rate of exchange prevailing on the Business Day immediately preceding:

- (i) the date of actual payment of the amount due, in the case of any proceeding in the courts of the Province of Ontario or in the courts of any other jurisdiction that will give effect to such conversion being made on such date; or
- (ii) the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 17.5(a)(ii) being hereinafter in this Section 17.5 referred to as the “**Judgment Conversion Date**”).

(b) If, in the case of any proceeding in the court of any jurisdiction referred to in Section 17.5(a)(ii), there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the Borrower shall pay such additional or lesser amount as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of Canadian Dollars or United States Dollars, as the case may be, which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date.

(c) Any amount due from the Borrower under the provisions of Section 17.5(b) shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this Agreement.

(d) The term “rate of exchange” in this Section 17.5 means the noon rate of exchange based on Canadian interbank transactions in Canadian Dollars or United States Dollars, as the case may be, in the Judgment Currency published or quoted by the Bank of Canada for the day in question, or if such rate is not so published or quoted by the Bank of Canada, such term shall mean the Equivalent Amount of the Judgment Currency.

## **17.6 Benefit of the Agreement**

This Agreement shall enure to the benefit of and be binding upon the Borrower, the Lenders, the Agent and their respective permitted successors and permitted assigns.

**17.7            Survival**

The provisions of Article 13 shall survive the repayment of the Credit Facility, whether on account of principal, interest or fees, and the termination of this Agreement, unless a specific release of such provisions by the Agent, on behalf of the Lenders, is delivered to the Borrower.

**17.8            Severability**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**17.9            Whole Agreement**

(a)        The Original Credit Agreement, as amended and restated by this Agreement, and the other Loan Documents constitute the whole and entire agreement between the parties hereto and supersede any prior agreements, undertakings, declarations, representations, written or oral, in respect thereof.

(b)        This Agreement is an amendment and restatement of the Original Credit Agreement. This Agreement does not discharge or constitute a novation of any debt or obligation contained in the Original Credit Agreement or in any other Loan Document.

(c)        The Borrower hereby confirms and agrees that the Security Documents executed by it continue to secure all of the Obligations of the Borrower under or in connection with the Original Credit Agreement as amended and restated by this Agreement and the other Loan Documents to which it is a party and that such Security Documents remain in full force and effect.

**17.10          Further Assurances**

The Borrower, each Lender and the Agent shall promptly cure any default by it in the execution and delivery of this Agreement, the Loan Documents or of any of the agreements provided for hereunder to which it is a party. The Borrower, at its expense, shall promptly execute and deliver to the Agent, upon reasonable request by the Agent, all such other and further documents, agreements, opinions, certificates and instruments in compliance with and required to give effect to the covenants and agreements of the Borrower hereunder or to make any recording, file any notice or obtain any consent contemplated herein.

**17.11          Waiver of Jury**

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD

NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

#### **17.12      Counterpart; Integration; Effectiveness; Electronic Execution**

(a)      Counterparts; Integration; Effectiveness This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents and any separate letter agreements with respect to fees payable to the Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 3.1, this Agreement shall become effective when it has been executed by the Agent and when the Agent has received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

(b)      Electronic Execution The words “execution”, “signed”, “signature”, and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including Parts 2 and 3 of the *Personal Information Protection and Electronic Documents Act* (Canada), the *Electronic Commerce Act, 2000* (Ontario) and other similar federal or provincial laws based on the *Uniform Electronic Commerce Act* of the Uniform Law Conference of Canada or its *Uniform Electronic Evidence Act*, as the case may be.

#### **17.13      Treatment of Certain Information; Confidentiality**

(a)      Each of the Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to it, its Affiliates and its Affiliates' respective partners, directors, officers, employees, agents and advisors on a need to know basis only (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority), (c) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap, derivative, credit-linked note or similar transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Agent or any Lender on a non-confidential basis from a source other than an Obligor.

(b) For purposes of this Section, “Information” means all information received in connection with this Agreement from any Obligor relating to any Obligor or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Agent or any Lender on a non-confidential basis prior to such receipt. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. In addition, the Agent may disclose to any agency or organization that assigns standard identification numbers to loan facilities such basic information describing the facility provided hereunder as is necessary to assign unique identifiers (and, if requested, supply a copy of this Agreement), if being understood that the Person to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to make available to the public only such Information as such person normally makes available in the course of its business of assigning identification numbers.

(c) In addition, and notwithstanding anything herein to the contrary, the Agent may provide the information described in Schedule H concerning the Borrower and the credit facility established herein to Loan Pricing Corporation and/or other recognized trade publishers of information for general circulation in the loan market.

#### **17.14      Time of the Essence**

Time shall be of the essence of this Agreement.

#### **17.15      Delivery by Facsimile Transmission**

This Agreement may be executed and delivered by facsimile transmission or other electronic communication and each of the parties hereto may rely on such facsimile signature as though such facsimile signature were an original signature.

#### **17.16      Hypothecary Representative**

For greater certainty and without limiting the power of the Agent hereunder or under any other Loan Document, the Agent and each Lender hereby appoints and authorizes Roynat to act as hypothecary representative within the meaning of Article 2692 of the *Civil Code of Quebec* (in such capacity, the “**Hypothecary Representative**”) of the Agent and the Lenders for the purposes of holding any security granted by any Obligor pursuant to the laws of the Province of Quebec and to exercise such rights and duties as are conferred upon the Hypothecary Representative thereunder and under applicable laws (with the power to delegate any such rights and duties as appropriate). Roynat, the Agent and each of the Lenders hereby confirms and agrees to such appointment and each Person who is or becomes the Agent or a Lender hereunder (including by its execution of an assignment and assumption agreement) shall be deemed to have consented to and ratified the foregoing appointment of the Hypothecary Representative and to have ratified all actions taken by the Hypothecary Representative prior to such date. For greater certainty, the Hypothecary Representative shall have the same rights, powers, immunities, indemnities and exclusions from liability as are prescribed in favour of the Agent in this Agreement, which shall apply *mutadis mutandis*. In the event of the resignation and appointment of a successor Agent (which shall include its resignation as Hypothecary Representative), such successor Agent shall also act as the Hypothecary Representative unless and until a successor hypothecary representative is otherwise appointed.

### **17.17 Termination of Agreement and Loan Documents**

(a) This Agreement shall terminate and shall be of no further effect, other than with respect to indemnities expressly stated to survive termination of this Agreement upon indefeasible repayment by the Obligors of all Obligations owing to the Agent and the Lenders (other than contingent indemnification obligations in respect of which no claim has then been made) and the obligations owing to Roynat pursuant to Section 5.9 and the termination of the Commitments.

(b) The Loan Documents shall terminate and shall be of no further effect and the Agent shall execute and deliver all discharges and termination statements requested by the Borrower (at the expense of the Borrower) upon indefeasible repayment by the Obligors of all Obligations owing to the Agent and the Lenders (other than contingent indemnification obligations in respect of which no claim has then been made and obligations arising pursuant to Section 5.9) and the termination of the Commitments.

### **17.18 Anti-Money Laundering Legislation**

(a) The Borrower acknowledge that, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and “know your client” laws (collectively, including any guidelines or orders thereunder, “**AML Legislation**”), the Lenders and the Agent may be required to obtain, verify and record information regarding the Borrower, the Guarantors, their directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Borrower and the Guarantors, and the transactions contemplated hereby. The Borrower shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or the Agent, or any prospective assignee or participant of a Lender or the Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

(b) The Borrower acknowledges and agrees that pursuant to the provisions of the PATRIOT Act, the Agent and any Lender may be required to obtain, verify and record information with respect to the US Obligors and the Borrower hereby agrees to cooperate with the Agent and each Lender and provide them with all information that may be required in order to fulfil their obligations under the Patriot Act. Without limiting the generality of the foregoing, the Borrower agrees to use commercially reasonable efforts to obtain the consent of any of their respective officers, directors and employees whose consent to the disclosure of any such information is required under applicable privacy legislation in Canada.

Each of the Lenders agrees that the Agent has no obligation to ascertain the identity of the Borrower or the Guarantors or any authorized signatories of the Borrower or a Guarantor on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from the Borrower or any Guarantor or any such authorized signatory in doing so.

### **17.19 Keepwell**

(a) Each Qualified ECP Obligor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Obligor in order for such Obligor to honor its guaranty obligations under this Agreement, or other Loan Documents, in each case, in respect of Swap

Obligations of an Obligor (provided, however, that each Qualified ECP Obligor shall only be liable under this Section 17.19 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 17.19, or otherwise under this Agreement or any Loan Document, as it relates to such other Obligors, voidable under Applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount).

(b) The obligations of each Qualified ECP Obligor under this Section 17.19 shall remain in full force and effect until performance in full of all Hedge Arrangements entered into from time to time by any Obligor prior to the date on which all Obligations are paid in full to the Lenders, the Agent, and all of the Lenders' Commitments are terminated. The Qualified ECP Obligors intend that this Section 17.19 constitutes, and this Section 17.19 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Obligor for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act

#### **17.20      Intercreditor Agreement**

The Lenders hereby (i) authorize and direct the Agent to enter into the Intercreditor Agreement substantially in the form provided to the Lenders prior to the Closing Date with such amendments and other changes as deemed appropriate by the Agent and to bind each of the Lenders thereto as if each Lender was an original party thereto; and (ii) agree to be bound by the Intercreditor Agreement as if an original party thereto.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

**BORROWER:**

**Address:**

c/o TorQuest Partners  
Brookfield Place  
161 Bay St, Suite 4240  
Toronto, ON M5J 2S1

Attention: Michael Salisbury  
Facsimile: (416) 956-7001

**JORIKI INC.**

by

  
Name: Jeff McLay  
Title: Chief Financial Officer

with a copy to:

Torys LLP  
79 Wellington Street West  
30th Floor, TD South Tower  
Toronto, ON M5K 1N2

Attention: Tom Zverina  
Facsimile: (416) 865-7380



**Address:**

Roynat Capital Inc.  
40 King St. W., 13<sup>th</sup> Floor  
Toronto, ON  
M5H 3Y2

Attention: Marian Nessim  
Email: Marian.Nessim@Roynat.com  
cc: notifications@roynat.com

**ROYNAT CAPITAL INC., as Agent**

by

  
\_\_\_\_\_  
Name: Marian Nessim  
Title: Director and District Manager  
\_\_\_\_\_  
Name: William Huk  
Title: Regional VP

in the case of any Lender or the Agent,  
with a copy to:

Davies Ward Phillips & Vineberg LLP  
155 Wellington Street West  
Toronto, ON M5V 3J7

Attention: Joel Scoler  
Facsimile: (416) 863-0871



**Address:**

Roynat Capital Inc.  
40 King St. W., 13<sup>th</sup> Floor  
Toronto, ON  
M5H 3Y2

Attention: Marian Nessim  
Email: Marian.Nessim@Roynat.com  
cc: notifications@roynat.com

**ROYNAT CAPITAL INC., as a Lender**

by

  
\_\_\_\_\_  
Name: Marian Nessim

Title: Director and District Manager

  
\_\_\_\_\_  
Name: William Huk

Title: Regional VP

**THIS IS EXHIBIT "N"**  
**TO THE AFFIDAVIT OF MICHAEL G. DEVON**  
**SWORN BEFORE ME OVER VIDEOCONFERENCE**  
**THIS 22<sup>nd</sup> DAY OF JANUARY, 2025**

*Madeline Cummings*  
\_\_\_\_\_  
Commissioner for Taking Affidavits

## INTERCREDITOR AGREEMENT

**THIS AGREEMENT** made as of the 8<sup>th</sup> day of September, 2023,

**B E T W E E N:**

**THE BANK OF NOVA SCOTIA**, in its capacity as agent to the Senior Lenders and including its successors and assigns (the "**Senior Agent**")

- and -

**ROYNAT CAPITAL INC.**, in its capacity as agent to the Subordinate Lenders and including its successors and assigns (the "**Subordinate Agent**")

- and -

**JORIKI INC.**, including its successors, whether by amalgamation or otherwise (the "**Borrower**")

- and -

**EACH ENTITY NOTED ON THE SIGNATURE PAGES ATTACHED** HERETO including their successors, whether by amalgamation or otherwise (the "**Guarantors**")

### **RECITALS**

WHEREAS the Borrower, the Senior Agent and the Senior Lenders are party to a third amended and restated credit agreement dated as of August 31, 2023;

AND WHEREAS the Senior Agent has authority to bind the Senior Lenders;

AND WHEREAS the Borrower, the Subordinate Agent and the Subordinate Lenders are party to a credit agreement dated as of September 8, 2023;

AND WHEREAS the Subordinate Agent has authority to bind the Subordinate Lenders;

AND WHEREAS the Borrower and the Guarantors have granted security over their respective property and assets in order to secure the indebtedness owing to the Senior Lenders and the Subordinate Lenders;

AND WHEREAS the parties hereto desire to set out their respective rights and priorities with respect to the repayment of the indebtedness owing and to be owing to them and the security granted and to be granted in connection therewith;

NOW THEREFORE for good and valuable consideration, receipt and sufficiency of which is hereby acknowledged by the undersigned, each of the undersigned hereby agrees as hereinafter set forth:

## 1. Definitions

All references to the plural herein shall also mean the singular and to the singular shall also mean the plural. All references to any party hereto or to any other Person herein, shall include the respective successors and assigns and any receiver, receiver-manager, agent or trustee of such party or Person. The words "**hereof**", "**herein**", "**hereunder**", "**this Agreement**" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not any particular provision of this Agreement and as this Agreement now exists or may hereafter be amended, modified, supplemented, extended, renewed, revised, restated or replaced. Unless otherwise specified herein, all statements of or references to dollar amounts in this Agreement shall mean lawful money of Canada. For purposes of this Agreement (including the recitals), the following terms shall have the respective meanings given to them below:

- (a) "**Agents**" means the Senior Agent and the Subordinate Agent.
- (b) "**Applicable Law**" means, in respect of any Person, property, transaction, event or other matter, as applicable, all laws, rules, statutes, regulations, treaties, orders, judgments and decrees and all official directives, rules, guidelines, orders, policies and other requirements of any governmental authority (whether or not having the force of law).
- (c) "**Borrower Group**" means (i) the Borrower and (ii) all corporations, partnerships, limited liability companies or other entities which have provided to the Senior Agent a guarantee of the obligations of the Borrower and shall include each future guarantor of the Borrower's Indebtedness to the Senior Agent. For greater certainty, as of the Closing Date the "**Borrower Group**" shall be comprised of the Borrower and the Persons identified on Schedule A attached hereto.
- (d) "**Borrower Group Collateral**" means (i) all undertaking, property and assets (whether real or personal, tangible or intangible) of the Borrower Group or any member or members thereof now owned or hereafter acquired and (ii) all of the Equity Interests of the Borrower Group that form part of the Security.
- (e) "**Business Day**" means any day, other than Saturday and Sunday, on which banks generally are open for business in Toronto, Ontario, Canada.
- (f) "**Closing Date**" means September 8, 2023.
- (g) "**Credit Facilities**" means, collectively, the Term Facility, the Revolving Facility, the Revolving B Facility and the Delayed Draw Facility.
- (h) "**Delayed Draw Facility**" has the meaning ascribed to such term in the Senior Credit Agreement.
- (i) "**Demand**" means a demand made (A) by the Subordinate Agent on behalf of the Subordinate Lenders under the Subordinate Credit Agreement or (B) by the

Senior Agent on behalf of the Senior Lenders under the Senior Credit Agreement for payment of the Obligations of the Borrower Group or any member or members of the Borrower Group owing to the Senior Lenders or the Subordinate Lenders, as the case may be, and the acceleration, if applicable, of all related indebtedness and liability.

- (j) **"Encumbrance"** means, in respect of any Person, any mortgage, debenture, pledge, hypothec, lien, charge, assignment by way of security, hypothecation or security interest granted or permitted by such Person or arising by operation of law, in respect of any of such Person's property, or any consignment or capital lease of property by such Person as consignee or lessee or any other security agreement, trust or arrangement having the effect of securing the payment of any debt, liability or obligation.
- (k) **"Equity Interests"** means, with respect to any Person, shares of capital stock (or other ownership or profit interests, including trust units, limited partnership units, limited liability company membership interests and other similar interests) of such Person.
- (l) **"Event of Default"** means the occurrence or existence of any event which, pursuant to the terms of the Senior Credit Agreement or the Subordinate Credit Agreement, as applicable, constitutes an event of default.
- (m) **"Financing Agreements"** means, collectively, the Senior Documents and the Subordinate Documents.
- (n) **"Hedge Arrangements"** means for any period for any member or members of the Borrower Group any arrangement or transaction between such member or members of the Borrower Group and any other person which is an interest rate swap transaction, basis swap, forward interest rate transaction, interest rate option, forward foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency interest rate swap transaction, currency option or any similar transaction (including any option with respect to any of such transactions or arrangements).
- (o) **"Indebtedness"** means any and all loans, obligations, liabilities and indebtedness of any kind, nature and description owed by any member or members of the Borrower Group to a given Lender or group of Lenders, as applicable, including principal, interest, charges, fees, costs, expenses and including, without limitation, all indebtedness, liabilities and obligations under Hedge Arrangements, however evidenced, whether as principal, surety, endorser, guarantor or otherwise arising under any of the Financing Agreements.
- (p) **"Insolvency Legislation"** means the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or any other law (whether foreign or otherwise) relating to bankruptcy, insolvency, liquidation, receivership, winding-up, reorganization, arrangement, adjustment, composition or relief of debtors and any similar statute or law in any jurisdiction.

- (q) **"Insolvency Proceeding"** means any bankruptcy, insolvency, receivership, liquidation, dissolution, winding-up, arrangement, restructuring, reorganization or similar proceeding under the laws of any jurisdiction in respect of the Borrower, any member of the Borrower Group or any material portion of their respective assets.
- (r) **"Lenders"** means, collectively, the Senior Lenders and the Subordinate Lenders and **"Lender"** means any one of them.
- (s) **"Notice of Default"** means a notice of an Event of Default or Events of Default issued by (i) the Subordinate Agent to the Borrower and the Senior Agent related to the Subordinate Credit Agreement in accordance with the terms hereof and specifying that such notice is issued pursuant to the terms of this Agreement and that a Standstill Period is commencing as of the date of receipt of such notice or (ii) by the Senior Agent to the Borrower and the Subordinate Agent related to the Senior Credit Agreement in accordance with the terms hereof and specifying that such notice is issued pursuant to the terms of this Agreement and that Permitted Payments may no longer be made. Each Notice of Default shall describe the Event of Default in reasonable detail.
- (t) **"Obligations"** means, collectively, the Senior Obligations and the Subordinate Obligations.
- (u) **"Obligors"** means the Borrower, each other member of the Borrower Group and any other Person primarily or secondarily liable with respect to the Obligations and **"Obligor"** means any one of them.
- (v) **"Permitted Payments"** means the following payments to be made by the Borrower to the Subordinate Lenders so long as no Notice of Default has been issued by the Senior Agent and remains effective: (i) monthly scheduled cash interest payments on the outstanding principal amount of the Subordinate Credit Agreement based on a principal amount of \$15,000,000 (as increased by any capitalization of interest) (less all principal repayments made from time to time (for certainty, no principal payments other than as set forth herein of such debt are permitted without the prior written consent of the Senior Lenders)) (the **"Principal Amount"**) which interest, for greater certainty, shall not exceed 14% per annum and shall include the capitalized interest of 5% per annum that the Borrower may elect to pay in cash, (ii) default interest in the amount of 2% per annum on the Principal Amount outstanding provided that all such payments are either paid by the issuance of paid-in-kind notes, capitalized or are accrued, (iii) provided that there exists no Event of Default, mandatory prepayments required pursuant to the terms of Sections 7.3 to 7.8 of the Subordinate Credit Agreement subject to the prior rights of the Senior Lenders to receive such payments pursuant to the terms of the Senior Credit Agreement, (iv) arrangement and up-front fees, paid to the Subordinate Agent and the Subordinate Lenders on the Closing Date, (v) out-of-pocket legal fees, costs and expenses incurred by the Subordinate Agent and the Subordinate Lenders prior to or concurrent with the completion of the transaction contemplated under the Subordinate Documents to the Closing Date, and (vi) reasonable out-of-pocket legal fees, costs and expenses incurred by the Subordinate Agent and the Subordinate Lenders after the Closing Date.

Notwithstanding the foregoing, provided that no Demand has been made by the Subordinate Agent or the Senior Agent, the Subordinate Agent shall be entitled to receive reimbursement of reasonable out-of-pocket legal fees, costs and expenses incurred by the Subordinate Agent.

- (w) **"Person"** is to be broadly interpreted and shall include an individual, a corporation, a limited liability company, an unlimited liability company, a partnership, a trust, an incorporated organization, a joint venture, the government of a country or any political subdivision of a country.
- (x) **"Preparatory Notices"** means, collectively, with respect to the Borrower Group Collateral (i) any notice pursuant to Section 244(1) of the *Bankruptcy and Insolvency Act* (Canada); and (ii) any notice pursuant to Section 63 of the *Personal Property Security Act* (Ontario) and **"Preparatory Notice"** means either of them.
- (y) **"Proceeds of Realization"** means all proceeds (including money, choses in action, securities, assets and other property) derived from any sale or disposition of, or other enforcement or realization proceedings with respect to any member of the Borrower Group and/or of the Borrower Group Collateral (a) after any Demand, (b) upon any dissolution, liquidation, winding-up, reorganization (including any proposal under the *Bankruptcy and Insolvency Act* (Canada) and any reorganization or arrangement under the *Companies' Creditors Arrangement Act* (Canada)), bankruptcy, insolvency or receivership of any member of the Borrower Group or any other arrangement or marshalling of the Borrower Group Collateral that is similar thereto which is not consented to by the Senior Lenders, (c) upon the enforcement of, or any action taken with respect to, any of the Security, (d) as insurance or expropriation proceeds or any other payment representing indemnity or compensation for loss of, damage to or interruption in the business, operation or enjoyment of all or any part of the Borrower Group Collateral or any proceeds thereof (including money, choses in action, securities, assets and other property), or (e) as a result of the exercise of any right of set off or other similar right or remedy, in each case net of all costs, charges and expenses or liabilities incurred in connection with such sale, disposition, enforcement or realization, including legal fees and all proper costs, charges, expenses and liabilities of any Receiver.
- (z) **"Receiver"** means a receiver, a manager, a receiver and manager, an interim receiver, whether privately appointed or appointed by court order, a trustee in bankruptcy or a liquidator.
- (aa) **"Revolving Facility"** has the meaning ascribed thereto in the Senior Credit Agreement.
- (bb) **"Revolving B Facility"** has the meaning ascribed thereto in the Senior Credit Agreement.
- (cc) **"Security"** means, collectively, the Senior Security and the Subordinate Security.

- (dd) **"Senior Credit Agreement"** means the third amended and restated credit agreement dated as of August 31, 2023 between, *inter alia*, the Senior Agent, the Senior Lenders and the Borrower, as such agreement may be further amended, restated, supplemented or revised from time to time.
- (ee) **"Senior Documents"** means the Senior Credit Agreement, all documents, instruments and agreements (including, for greater certainty, Hedging Agreements and Service Agreements) contemplated by or referred to in the Senior Credit Agreement, the Senior Security and any guarantees heretofore or hereafter granted by any member or members of the Borrower Group to the Senior Agent for and on behalf of the Senior Lenders or any of them or to the Senior Lenders or any of them and all collateral documents related to the foregoing.
- (ff) **"Senior Lenders"** means, collectively, each of the lenders that are from time to time lenders under the Senior Credit Agreement and includes their successors and permitted assigns and shall individually be referred to as a **"Senior Lender"**.
- (gg) **"Senior Obligations"** means any and all Indebtedness owed by the Borrower Group or any member or members of the Borrower Group to the Senior Agent and the Senior Lenders arising under or pursuant to the Senior Documents.
- (hh) **"Senior Security"** means all Encumbrances granted to the Senior Agent for and on behalf of the Senior Lenders, over all or any part of the Borrower Group Collateral, to secure all or any portion of the Senior Obligations and all present and future agreements and instruments reflecting such security.
- (ii) **"Service Agreements"** means agreements made between any Obligor and a Senior Lender in respect of cash management, payroll, credit card or other banking services; and **"Service Agreement"** means any one of them as required by the context.
- (jj) **"Standstill Period"** shall have the meaning ascribed to such term in Section 4(b).
- (kk) **"Subordinate Credit Agreement"** means the credit agreement dated as of September 8, 2023 among the Subordinate Agent, the Subordinate Lenders and the Borrower, as may be amended, restated, supplemented or revised from time to time.
- (ll) **"Subordinate Documents"** means the Subordinate Credit Agreement, all documents, instruments and agreements contemplated by or referred to in the Subordinate Credit Agreement, the Subordinate Security and any guarantees heretofore or hereafter granted by any member or members of the Borrower Group to the Subordinate Agent and the Subordinate Lenders and all collateral documents related to the foregoing.
- (mm) **"Subordinate Lenders"** means, collectively, each of the lenders that are from time to time lenders under the Subordinate Credit Agreement and includes their successors and permitted assigns and shall individually be referred to as a **"Subordinate Lender"**.



- (nn) **"Subordinate Obligations"** means any and all Indebtedness owed by the Borrower or any member or members of the Borrower Group to the Subordinate Lenders arising under or pursuant to the Subordinate Documents.
- (oo) **"Subordinate Security"** means all Encumbrances granted to the Subordinate Agent for and on behalf of the Subordinate Lenders over all or any part of Borrower Group Collateral, to secure all or any portion of the Subordinate Obligations and all present and future agreements and instruments reflecting such security.
- (pp) **"Subsidiary"** means, at any time, as to any Person, any other Person, if at such time the first mentioned Person owns, directly or indirectly, securities or other ownership interests in such other Person, having ordinary voting power to elect a majority of the board of directors or persons performing similar functions for such other Person.
- (qq) **"Term Facility"** has the meaning ascribed thereto in the Senior Credit Agreement.

## 2. **Consent to Creation of Indebtedness/Granting of Security**

- (a) Each of the Lenders represents to the other Lenders as follows:
  - (i) the Senior Lenders represent that, as of the Closing Date, the maximum authorized principal amount of the Credit Facilities available to be borrowed (which, for greater certainty, is not inclusive of Indebtedness under Hedging Arrangements or Service Agreements) pursuant to the Senior Credit Agreement as of the Closing Date, is the principal amount of \$48,000,000 and US\$78,091, 942 and that the Senior Lenders have no Indebtedness owing to them by the Obligors other than pursuant to the Loan Documents, Hedging Arrangements and Service Agreements (as such terms are defined in the Senior Credit Agreement); and
  - (ii) the Subordinate Lenders represent that the outstanding principal amount owing pursuant to the Subordinate Credit Agreement on the Closing Date is \$7,5000,000 and the maximum amount which may become available to be borrowed, is \$15,000,000.
- (b) The Senior Agent and the Subordinate Agent are each of the understanding that the Persons identified on Schedule A are, as of the Closing Date, all of the guarantors of the Indebtedness of the Borrower.
- (c) The Subordinate Agent and the Subordinate Lenders represent in favour of the Senior Lenders that they will obtain no guarantee or security from a Subsidiary of the Borrower unless the Senior Agent has obtained substantially the same guarantee and/or security.
- (d) Notwithstanding any contrary provision contained in any agreement or security document between or among any one or more of the parties hereto, but subject to the terms and conditions of this Agreement, each of the parties hereto hereby consents to the creation and continued existence of the Obligations and to the execution and delivery by the Borrower Group of the Financing Agreements.

### 3. Subordination

(a) Subject to the terms of this Agreement, the payment and performance of the Subordinate Obligations in favour of the Subordinate Lenders, and the Encumbrances contained in the Subordinate Security, shall be and are hereby unconditionally and irrevocably deferred, postponed and subordinated in all respects to (i) the prior final and irrevocable payment in full in cash by the Borrower Group of the Senior Obligations and (ii) the Senior Security. Notwithstanding the foregoing and subject to the terms of this Agreement, the Borrower may make and the Subordinate Lenders may receive Permitted Payments.

(b) Without limitation to Section 3(a) above and subject to the last sentence of this Section 3(b), the Subordinate Agent and the Subordinate Lenders agree, and the Borrower acknowledges, consents and agrees, that (i) any Encumbrances constituted by the Senior Security or otherwise now or hereafter held by the Senior Agent or by or for the benefit of all or any of the Senior Lenders shall rank senior in right, priority, operation and effect and in all other respects to any and all Encumbrances constituted by the Subordinate Security or otherwise now or hereafter held by the Subordinate Agent and the Subordinate Lenders, (ii) any obligation to pay and any direct or indirect payment or other distribution on or in respect of the Subordinate Obligations, including any purchase, redemption or other acquisition by any member of the Borrower Group or any other Obligor of the Subordinate Obligations (a "**Payment or Distribution**"), is subordinated and postponed, to the extent and in the manner provided herein, to the prior payment in full of all Senior Obligations, (iii) no payment on account of interest, fees or other amounts may be made in respect of the Subordinate Obligations by the Borrower, any other member of the Borrower Group or any other Obligor, or accepted by the Subordinate Agent or a Subordinate Lender, prior to payment in full of the Senior Obligations, (iv) no prepayment of the principal amount of the Subordinate Obligations shall be made by the Borrower or any other Obligor, or accepted by the Subordinate Agent or a Subordinate Lender, prior to payment in full of the Senior Obligations, (v) the subordinations and postponements provided for herein are for the benefit of the Senior Agent and the Senior Lenders and shall be enforceable by the Senior Agent on their behalf, and (vi) each Senior Lender shall be deemed to have entered into the Senior Credit Agreement in material reliance upon this Agreement and the provisions hereof. A Payment or Distribution includes a payment or distribution of cash, securities or other property and the exercise of a right of set off and also includes any purchase, redemption or other acquisition by the Borrower or any Obligor of any of the Subordinate Obligations. Notwithstanding the foregoing and subject to the terms of this Agreement, the Borrower may make and the Subordinate Lenders may receive Permitted Payments.

### 4. Standstill of Subordinate Obligations

(a) Issuance of Notice of Default - The Subordinate Agent may elect to, upon the occurrence of an Event of Default under the Subordinate Credit Agreement and shall, prior to and as a precondition to any Demand, issue to the Borrower a Notice of Default and shall concurrently deliver to the Senior Agent a copy of such Notice of Default. Except to the extent otherwise permitted hereunder, the Subordinate Agent and the Subordinate Lenders may not exercise any rights as to Demand, acceleration and/or realization or enforce payment of the Subordinate Obligations or enforce the Subordinate Security unless and until a Notice of Default is issued in accordance with this Section and any applicable Standstill Period has elapsed. Neither the Senior Agent nor the Senior Lenders shall be required to issue a Notice of Default prior to making Demand but shall deliver to the Subordinate Agent a copy of any Notice of Default delivered to the Borrower. No Lender shall have any liability for any inadvertent failure

to comply with this Section nor shall any failure to comply with this Section affect or impair the priorities established herein or impair or release the subordination and, except as expressly set out herein, the other benefits provided by this Agreement but a Standstill Period will not commence should the Subordinate Agent fail to issue to the Senior Agent a Notice of Default.

(b) No Action During Standstill Period – The Subordinate Agent and each Subordinate Lender agrees that its rights as to Demand, acceleration and realization are, until such time as the Senior Obligations have been finally and irrevocably paid in full in cash and all commitments to advance funds under the Senior Documents have been terminated, are subject to the following specific agreement:

- (i) the Subordinate Agent shall not prior to the issuance of a Notice of Default and shall not for a period commencing on the date of receipt by the Borrower and the Senior Agent of any Notice of Default issued by the Subordinate Agent and terminating 120 days following the date of delivery of such Notice of Default, and receipt of notice by the Senior Agent of such from the Subordinate Agent (the "**Standstill Period**"), take any steps or actions to enforce payment of the Subordinate Obligations or commence any realization upon the Subordinate Security, provided that: notwithstanding the foregoing, during a Standstill Period (a) the Subordinate Agent may demand payment of the Subordinate Obligations under the Subordinate Documents only if the Senior Agent on behalf of the Senior Lenders has made demand for payment of the Senior Obligations under the Senior Documents, (b) the Subordinate Agent on behalf of the Subordinate Lenders may accelerate the Subordinate Obligations only if the Senior Agent on behalf of the Senior Lenders has accelerated the Senior Obligations, and (c) the Subordinate Agent on behalf of the Subordinate Lenders may issue one or more Preparatory Notices in connection with Subordinate Security at any time after such Preparatory Notices have been issued in connection with the Senior Security by the Senior Agent, the Senior Lenders or any Receiver appointed by any one of them; and
- (ii) notwithstanding the foregoing, if at any time but prior to Demand by the Subordinate Agent on behalf of the Subordinate Lenders, the Event of Default or, if more than one, all of the Events of Default, set out in a Notice of Default or multiple Notices of Default issued by the Subordinate Agent or the Subordinate Lenders (x) is or are cured (if and to the extent capable of cure), or (y) is or are waived or revoked, then the Subordinate Agent and the Subordinate Lenders will not be entitled to take any steps to enforce payment of the Subordinate Obligations but will have to rely on the issuance of a fresh Notice of Default and the expiration of another Standstill Period. In addition, there may only be an aggregate of 225 days of standstill in any given 365-day period, unless this would result in the last Standstill Period in such 365-day period being in force for less than 10 days, in which case such period shall be extended by the number of days necessary to cause the last Standstill Period to be in force for a full 10-day period.

(c) Deemed Revocation or Termination of Notice of Default - A Notice of Default given under Section 4(a) shall be deemed to have been revoked or terminated: (i) upon satisfaction or cure prior to acceleration, if and to the extent capable of satisfaction or cure, of the Event of Default or Events of Default specified in the Notice of Default, (ii) upon waiver of the Event of Default or Events of Default specified in the Notice of Default by the Subordinate Agent, or (iii) upon revocation in writing by the Subordinate Agent of such Notice of Default. Notice of such waiver, revocation or termination shall be provided to the Senior Agent by the Subordinate Agent.

(d) Permitted Action During Standstill Period - Notwithstanding Sections 4(a) and 4(b) above, during a Standstill Period provided that the Senior Agent or the Senior Lenders have made Demand for payment of the Senior Obligations, the Subordinate Agent or the Subordinate Lenders:

- (i) may issue additional notice to the Borrower of the occurrence of an event of default pursuant to the Subordinate Credit Agreement;
- (ii) may issue one or more Preparatory Notices in connection with the Subordinate Security at any time after such statutory notices have been issued in connection with the Senior Security by the Senior Lenders or any Receiver appointed by any one of them;
- (iii) may Demand payment of the Subordinate Obligations;
- (iv) may accelerate the Subordinate Obligations, if the Senior Lenders have accelerated the Senior Obligations, and take action for non-payment of the Subordinate Obligations for the purposes of obtaining a monetary judgment in respect thereof provided that no measure is taken to enforce any judgment granted in such action;
- (v) if the Senior Lenders have not already accelerated the Senior Obligations, may accelerate the Subordinate Obligations for the sole purpose of proving their claims in any Proceeding relating to an Obligor;
- (vi) may take action that is required to preserve the validity, efficacy or priority of the Subordinate Obligations but in no manner inconsistent with the terms of this Agreement;
- (vii) may take action for conversion of any non-fixed charge to a fixed charge to the extent applicable; and
- (viii) may file a proof of claim or attend and vote at a meeting of creditors in connection with any action, suit or proceeding whether under the *Bankruptcy and Insolvency Act* (Canada) or otherwise;

provided, however, that any acceleration, Demand, issuance of notice of event of default, issuance of any Preparatory Notices or exercise of any remedies of the foregoing, by the Subordinate Agent and/or the Subordinate Lenders shall not alter the priorities, payment subordination, the distribution of proceeds provisions or any other provisions whatsoever of this Agreement.

## 5. Payment Blockage

(a) **Payment Block** - Following the issuance of a Notice of Default by the Senior Agent and subject to the terms of this Agreement:

- (i) no member of the Borrower Group may make or tender to the Subordinate Agent or a Subordinate Lender and the Subordinate Agent and the Subordinate Lenders may not receive any direct or indirect distribution, payment (including, but not limited to, Permitted Payments, principal, interest and fees), prepayment or repayment, from any member or members of the Borrower Group, by set off, payment, or by any other manner; and
- (ii) any payments made to the Subordinate Agent or a Subordinate Lender contrary to (i) above shall be required to be made to the Senior Agent to be applied as against the Senior Obligations.

(b) Termination of Payment Blockage

- (i) Following the issuance of a Notice of Default by the Senior Agent, Section 5(a) will only cease to be operative and Permitted Payments may only thereafter be made (including, for greater certainty, any Permitted Payments, the payment of which were suspended during such time) should the Notice of Default be revoked or terminated in accordance with the provisions of Section 5(c).
- (ii) After the passage of no less than 90 days (or immediately upon the occurrence of a payment Event of Default or an Insolvency Proceeding applicable to a member of the Borrower Group) following the revocation or termination of a Notice of Default as set forth in Section 5(c), the Senior Agent shall then be entitled to issue a Notice of Default in connection with any new Event of Default that did not exist at the time of the issuance of the previous Notice of Default, which issuance shall commence a new payment block pursuant to Section 5(a). Such new payment block will thereafter cease in accordance with the provisions of paragraph (i) of this Section 5(b) and, for certainty, there shall be no limit on the number of times that a Notice of Default may be issued.

(c) Deemed Revocation or Termination of Notice of Default - A Notice of Default given under Section 5(a) shall be deemed to have been revoked or terminated: (i) upon satisfaction or cure prior to acceleration, if and to the extent capable of satisfaction or cure, of the Event of Default or Events of Default specified in the Notice of Default, (ii) upon waiver of the Event of Default or Events of Default specified in the Notice of Default by the Senior Agent, or (iii) upon revocation in writing by the Senior Agent of such Notice of Default. Notice of such waiver, revocation or termination shall be provided to the Subordinate Agent by the Borrower and the Senior Agent although the Senior Agent shall have no liability for failing to provide such notice.

## 6. Application of Proceeds of Realization

All payments to be made by any member of the Borrower Group following any Demand and all Proceeds of Realization received by any Lender shall be paid, applied and distributed as follows:

- (a) first, to any Person having an Encumbrance over any of the Borrower Group Collateral (to the extent Proceeds of Realization are derived from property in respect of which such Person has a prior ranking Encumbrance) in priority to the Lenders;
- (b) second, to payment of all costs and expenses incurred by the Senior Agent and the Senior Lenders and in payment of all of the reasonable remuneration of any Receiver appointed by the Senior Lenders and all reasonable costs incurred by such Receiver, in each case, in the exercise of all or any powers granted to it under the Security;
- (c) third, in payment of all amounts of money borrowed by or advanced to a Receiver appointed by the Senior Lenders and any interest thereon;
- (d) fourth, to the Senior Lenders, on account of the Senior Obligations with the principal amount owing to the Senior Lenders not being in excess of the aggregate of (A) the lesser of (i) \$48,000,000 and US\$78,855,165 plus all accrued interest thereon less principal repayments of the Term Facility and principal repayments of the Delayed Draw Facility with a corresponding cancellation of that amount of the commitment under the Delayed Draw Facility, and (ii) principal owing under the Credit Facilities plus all accrued interest thereon, (B) outstanding Indebtedness owing by members of the Borrower Group pursuant to all Hedging Agreements and Service Agreements, and (C) the lesser of (i) \$48,000,000 and US\$78,855,165 plus all accrued interest thereon, and (ii) the outstanding Indebtedness advanced to the Borrower pursuant to Section 20(a)(A) plus all accrued interest thereon;
- (e) fifth, to the Subordinate Lenders, (A) on account of the Subordinate Obligations (with the principal amount owing to the Subordinate Lenders being the lesser of (i) \$15,000,000 plus all accrued or capitalized interest thereon and (ii) the outstanding principal indebtedness under the Subordinate Credit Agreement plus all accrued or capitalized interest thereon) and (B) to the payment of (i) all costs and expenses incurred by the Subordinate Agent and the Subordinate Lenders and (ii) all of the reasonable remuneration of any Receiver appointed by the Subordinate Lenders and all reasonable costs incurred by such Receiver, in the exercise of all or any powers granted to it under the Security;
- (f) sixth, to the Senior Lenders, on account of all other Indebtedness remaining owing to them;
- (g) seventh, to the Subordinate Lenders, on account of all other Indebtedness remaining owing to them; and
- (h) eighth, all amounts remaining after the foregoing distributions shall be applied in accordance with Applicable Law.

## 7. Appointment of Receiver

Whether before or after a Standstill Period and until such time as the Senior Obligations have been paid in full, any Receiver appointed by the Senior Lenders shall be entitled to exclusive possession, custody and control of the Borrower Group Collateral. In the event that the Subordinate Agent on behalf of the Subordinate Lenders appoints a Receiver of any member of the Borrower Group or over any of the Borrower Group Collateral and thereafter the Senior Lenders appoint a Receiver of such member of the Borrower Group or over the Borrower Group Collateral, the Subordinate Agent shall terminate the appointment of its Receiver upon request by the Senior Agent so long as not prohibited by Applicable Law from doing so.

## 8. Insurance and Condemnation Awards

So long as the Senior Obligations have not been paid in full, the Senior Agent and the Senior Lenders shall have the exclusive right, subject to the rights of the Obligors under the Senior Credit Agreement, to settle and adjust claims in respect of Borrower Group Collateral under policies of insurance and to approve any award granted in any condemnation or similar proceeding. All proceeds of any such policy and any such award, shall (a) first, subject to the terms of the Senior Credit Agreement, be paid to the Senior Agent for the benefit of Senior Lenders pursuant to the terms of the Senior Documents, (b) second, after the payment in full of the Senior Obligations and subject to the terms of the Subordinate Credit Agreement, be paid to the Subordinate Agent for the benefit of the Subordinate Lenders pursuant to the terms of the Subordinate Documents, and (c) third, if no Obligations are outstanding, be paid to the owner of the subject property, to such other Person as may be entitled thereto or to such Person as a court of competent jurisdiction may otherwise direct. Until the payment in full of the Senior Obligations, if the Subordinate Agent or a Subordinate Lender shall, at any time, receive any proceeds of any such insurance policy or any such award or payment to which it is not entitled hereunder, it shall segregate and hold in trust and forthwith transfer and pay over such proceeds to the Senior Agent to be applied against the Senior Obligations.

## 9. Sub-Agency of Senior Agent

(a) The Senior Agent agrees that if it shall at any time hold an Encumbrance pursuant to the Senior Security on any Borrower Group Collateral that can be perfected by the possession or control of such Borrower Group Collateral or by control over any account in which such Borrower Group Collateral is held, and if such Borrower Group Collateral or any such account is in fact in the possession or under the control of the Senior Agent, or of agents or bailees of the Senior Agent (such Borrower Group Collateral being referred to herein as the **"Pledged or Controlled Collateral"**), the Senior Agent, shall, solely for the purpose of perfecting the Encumbrances granted pursuant to the Subordinate Security and subject to the terms and conditions of this Section 9, also hold such Pledged or Controlled Collateral as gratuitous bailee for the Subordinate Agent for the benefit of the Subordinate Lenders.

(b) The obligations and responsibilities of the Senior Agent to the Subordinate Agent and the Subordinate Lenders under this Section shall be limited solely to holding or controlling the Pledged or Controlled Collateral as gratuitous bailee in accordance with this Section 9. Without limiting the foregoing, the Senior Agent shall have no obligation or responsibility to ensure that any Pledged or Controlled Collateral is genuine or owned by any of the Obligors. The Senior Agent acting pursuant to this Section 9 shall not, by reason of this Agreement, any

other Senior Document or any other document, have a fiduciary relationship in respect of any other Senior Lender, the Subordinate Agent or any Subordinate Lender.

(c) Upon payment in full of the Senior Obligations, the Senior Agent shall transfer the possession and control of the Pledged or Controlled Collateral, together with any necessary endorsements but without recourse or warranty, (i) if the Subordinate Obligations are outstanding at such time and the Pledged or Controlled Collateral has been pledged to the Subordinate Agent for the benefit of the Subordinate Lenders as part of the Subordinate Security, to the Subordinate Agent and (ii) if no Subordinate Obligations are outstanding at such time or the Pledged or Controlled Collateral has not been pledged to the Subordinate Agent for the benefit of the Subordinate Lenders as part of the Subordinate Security, to the Borrower, in each case so as to allow such Person to obtain possession and control of such Pledged or Controlled Collateral. In connection with any transfer under clause (i) of the immediately preceding sentence, the Senior Agent agrees to take reasonable actions in its power (with all costs and expenses in connection therewith to be for the account of the Borrower) as shall be reasonably requested by the Subordinate Agent to permit the Subordinate Agent, for the benefit of the Subordinate Lenders to obtain a first priority security interest in the Pledged or Controlled Collateral.

#### **10. Priority Not Affected by Certain Matters**

The parties hereto agree to the ordering of the priorities, postponements and subordinations provided for in this Agreement and to the extent necessary to effect the result and distributions contemplated herein and the same shall apply and be effective notwithstanding:

- (a) the fact that any rule of law or any statute may alter or vary the priorities set forth in this Agreement;
- (b) the actual order of creation, grant, execution, delivery, registration, filing or crystallization of or under the Security or the filing of any financing statement or other document or instrument with respect thereto;
- (c) the actual order or time of attachment of any security interest constituted by or related to any of the Security;
- (d) the perfection or actual order or time of perfection of any security interest constituted by or related to any of the Security;
- (e) the time of any advance or other extension of credit or the incurrence of any of the indebtedness, obligation or liabilities with respect to any of the Obligations;
- (f) the time of the default in respect of any of the Security, Demand or notice, the making of any Demand or giving of any notice or the failure to give any notice;
- (g) any lack of validity, legality, completeness or enforceability of the Senior Obligations, the Senior Credit Agreement or any Senior Security;



- (h) any failure of, or delay by, the Senior Agent or any Senior Lender:
  - (i) to assert any claim or demand or to enforce any right, power or remedy against the Borrower, any other member of the Borrower Group or any other Obligor under the Senior Credit Agreement, any other Senior Document, any Applicable Law or otherwise; or
  - (ii) to exercise any right, power or remedy against the Borrower, any other member of the Borrower Group or any other Obligor, the Senior Security or any other collateral securing the Senior Obligations; and/or
- (i) any other circumstance which might otherwise constitute a defense available to, or a legal or equitable discharge of, or otherwise prejudicially affect the subordination herein provided.

## **11. No Release**

This Agreement shall remain in full force and effect without regard to, and the obligations of the Lenders hereunder shall not be released or otherwise affected or impaired by:

- (a) any exercise or non-exercise by the Senior Lenders of any right, remedy, power or privilege in any of the Senior Documents;
- (b) any waiver, consent, extension, indulgence or other action, inaction or omission by the Senior Lenders under or in respect of this Agreement or any of the Senior Documents;
- (c) any default by a member or members of the Borrower Group under, any limitation on the liability of a member or members of the Borrower Group on the method or terms of payment under, or any irregularity or other defect in, any of the Senior Documents;
- (d) the lack of authority or revocation hereof by any other Person;
- (e) any defence based upon an election of remedies by the Lenders or any of them which destroys or otherwise impairs the subrogation rights of any other Lender or Lenders;
- (f) any merger, consolidation or amalgamation of the Subordinate Agent or any Subordinate Lender, or a member or members of the Borrower Group, into or with any other Person;
- (g) any proceeding pursuant to Insolvency Legislation in respect of the Subordinate Agent, the Subordinate Lenders, the Senior Lenders or any of them; or
- (h) any Insolvency Proceeding affecting a member or members of the Borrower Group.

## **12. Liquidation, Dissolution, Bankruptcy, etc.**

(a) In the event of any distribution, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of the assets of the Borrower or any member of the Borrower Group or in the event of any other payment or distribution to creditors of the Borrower or any member of the Borrower Group (including, without limitation, any dividends in a bankruptcy and any payment or distributions of cash or of securities of the Borrower, any member of the Borrower Group or another person under a plan of arrangement) in connection with any Insolvency Proceeding relating to any member of the Borrower Group, the Senior Lenders shall (subject to the terms of this Agreement) be entitled to receive payment in full (including interest accruing to the date of receipt of such payment at the applicable rate whether or not allowed as a claim in any such proceeding) of the Senior Obligations before the Subordinate Lenders are entitled to receive any direct or indirect payment or distribution of any cash or other property on account of the Subordinate Obligations, and the Senior Lenders shall (subject to the terms of this Agreement) be entitled to receive directly, for application in payment of such Senior Obligations (to the extent necessary to pay all Senior Obligations in full after giving effect to any substantially concurrent payment or distribution to the Senior Lenders in respect of the Senior Obligations), any payment or distribution of any kind or character, whether in cash or other property, which shall be payable or deliverable upon or with respect to the Subordinate Obligations. To the extent any payment of Senior Obligations (whether by or on behalf of the Borrower or any member of the Borrower Group, as proceeds of security or enforcement of any right of set-off or otherwise) is declared to be a fraudulent preference or otherwise preferential, set aside or required to be paid to a trustee, receiver or other similar person under applicable law, then if such payment is recoverable by, or paid over to, such trustee, receiver or other person, the Senior Obligations or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding as if such payment had not occurred.

(b) In order to enable the Senior Lenders to enforce their rights hereunder in any of the actions or proceedings described in this Section 12, upon the failure of any Subordinate Lender (after request by the Senior Agent therefor) to make and present on a timely basis a proof of claim against a member of the Borrower Group on account of the Subordinate Obligations or other motion or pleading as may be expedient or proper to establish a Subordinate Lender's entitlement to payment of any Subordinate Obligations, the Senior Agent for and on behalf of the Senior Lenders is hereby irrevocably authorized and empowered, in its discretion and at its expense (reimbursable by the Borrower), to make and present for and on behalf of such Subordinate Lender such proofs of claims or other motions or pleadings and to demand, receive and collect any and all dividends or other payments or disbursements made thereon in whatever form the same may be paid or issued and to apply the same on account of the Senior Obligations in accordance with Section 6 of this Agreement. Each Subordinate Lender hereby covenants and agrees not to exercise any voting right or other privilege that it may have from time to time in any Insolvency Proceeding in favour of any plan, proposal, compromise, arrangement or similar transaction or to make or to join in any claim or other action that would defeat: (a) the right of the Senior Lenders to receive payments and distributions in accordance with this Agreement otherwise payable or deliverable upon or with respect to the Subordinate Obligations so long as any Senior Obligations remain outstanding; or (b) the obligation of the Subordinate Lenders to receive, hold in trust, and pay over to the Senior Lenders certain payments and distributions as contemplated by Section 14. All allocations of payments between the Senior Lenders and the Subordinate Lenders shall, subject to any court order to the contrary, continue to be made after the filing of a petition under any Insolvency

Legislation, on the same basis that the payments were to be allocated hereunder prior to the date of such filing. Each Subordinate Lender hereby agrees that the priorities and subordination agreed to in this Agreement shall, as between the Lenders, be paramount to any plan, proposal, compromise, arrangement or similar transaction in connection with any member of the Borrower Group.

(c) No Subordinate Lender shall, without the prior written consent of the Senior Lenders, provide debtor in possession of financing to a member of the Borrower Group.

### **13. Remedies**

Each member of the Borrower Group and the Lenders hereby agree that all covenants, provisions and restrictions contained herein are necessary and fundamental in order to establish the respective priorities of the Lenders in connection with the Obligations and the Senior Security, and that a breach by a member or members of the Borrower Group or the Lenders or any of them of any such covenant, provision or restriction would result in damages to the affected Lenders that could not be adequately compensated by monetary award. Accordingly, it is expressly agreed by each member of the Borrower Group and the Lenders that, in addition to all other remedies available to it including, without limitation, any action for damages, the affected Lenders shall be entitled to the immediate remedy of a restraining order, interim injunction, injunction or other form of injunctive or other relief as may be decreed or issued by any court of competent jurisdiction to restrain or enjoin a member or members of the Borrower Group or the non-compliant Lenders from breaching any such covenant, provision or restriction.

### **14. Payments Received in Contravention of this Agreement**

(a) If any Proceeds of Realization, prepayments or other payments (including a Permitted Payment) are made to or received by the Subordinate Agent or a Subordinate Lender or any other Person on its behalf in contravention of this Agreement, such Person will hold such Proceeds of Realization, prepayments or payment in trust, separate and apart from all property of such Person for the benefit of the Senior Lenders and will forthwith pay such Proceeds of Realization, prepayments or payments to the Senior Agent for application to the payment of the Senior Obligations or as otherwise required by this Agreement. For greater certainty, the Subordinate Agent and each Subordinate Lender agrees that, if all or any part of any payment made on account of the Senior Obligations is recovered by the Subordinate Agent or a Subordinate Lender from a Senior Lender as a preference, fraudulent transfer or similar payment under any Insolvency Legislation or other law, any payment or distribution received by the Subordinate Agent or a Subordinate Lender on the Subordinate Obligations will be deemed to have been received by it in trust for the Senior Lenders and will promptly be paid over to the Senior Agent until the satisfaction in full in cash of all Senior Obligations (subject to the terms of this Agreement). Should the Subordinate Agent or a Subordinate Lender fail to immediately pay over and deliver or cause to be paid over or delivered such payment or Proceeds of Realization, to the Senior Agent, each Subordinate Lender agrees that it shall reimburse the Senior Lenders entitled thereto for the full amount of such payment or Proceeds of Realization it has received and all of the costs of collection and recovery thereof, including reasonable legal fees and disbursements.

(b) Upon the final and irrevocable payment in full in cash of all Senior Obligations and the termination of all commitments to advance funds under the Senior Credit Agreement,

the Subordinate Agent on behalf of the Subordinate Lenders shall be subrogated to all rights of the Senior Agent to the extent of any payment made to the Senior Agent by the Subordinate Agent or the Subordinate Lenders pursuant to the foregoing paragraph or as otherwise provided in this Agreement. For the purpose of such subrogation and to the extent permitted by applicable law, no payment or distribution received by the Senior Agent to which the Subordinate Agent or a Subordinate Lender would have been entitled but for the subordination of the Subordinate Obligations pursuant to this Agreement, and no payment over by the Subordinate Agent or a Subordinate Lender to the Senior Lenders pursuant to the provisions of this Section 14, shall, as between the Borrower, the Borrower Group, its Subsidiaries and their creditors (other than the Senior Lenders), on the one hand, and the Subordinate Agent and the Subordinate Lenders, on the other, be deemed to be a payment or distribution by the Borrower, the Borrower Group or its Subsidiaries on account of the Subordinate Obligations.

**15. No Marshalling**

Each Subordinate Lender hereby waives any right it may have to require the Senior Lenders to marshal in its favour.

**16. No Reliance**

Each Lender is fully and independently responsible for acquiring and updating information relating to the financial condition of the Borrower Group and all circumstances relating to the payment or non-payment of the Obligations and no Lender shall be liable to any other Lender in connection with the distribution of such information.

**17. Representations and Warranties**

Each of the Lenders hereby represents and warrants to the other Lenders that:

- (a) such Lender has not previously assigned any interest in the Obligations or the Security held by it in connection therewith;
- (b) no Person owns an interest in the Obligations or Security held by that Lender, whether as joint holders or otherwise;
- (c) such Lender has all requisite capacity, power and authority to enter into and carry out the transactions contemplated by this Agreement; and
- (d) all necessary action, corporate or otherwise, has been taken to authorize the execution, delivery and performance of this Agreement by such Lender and that such Lender has duly executed and delivered this Agreement.

**18. No Contest and No Objection**

(a) Neither the Subordinate Agent nor any Subordinate Lender will take, or cause or permit any other Person to take on their behalf, any steps whatsoever whereby the priority or validity of any of the Senior Security or the rights of the Senior Lenders hereunder or under the Senior Credit Agreement, the Senior Security or the other Senior Documents shall be delayed, defeated, impaired or diminished, and without limiting the generality of the foregoing, the Subordinate Agent and each Subordinate Lender will not challenge, object to, compete with or impede in any manner any act taken or proceeding commenced by the Senior Lenders in

connection with the enforcement by the Senior Agent or the Senior Lenders of the Senior Security to the extent such act or proceeding is otherwise permitted pursuant to this Agreement.

(b) Neither the Senior Agent nor any Senior Lender will take, or cause or permit any other Person to take on their behalf, any steps whatsoever whereby the priority or validity of any of the Subordinate Security or the rights of the Subordinate Agent and/or the Subordinate Lenders hereunder or under the Subordinate Credit Agreement, the Subordinate Security or the other Subordinate Documents shall be delayed, defeated, impaired or diminished, and without limiting the generality of the foregoing, the Senior Agent and the Senior Lenders will not challenge, object to, compete with or impede in any manner any act taken or proceeding commenced by the Subordinate Agent or the Subordinate Lenders in connection with the enforcement by the Subordinate Agent and the Subordinate Lenders of the Subordinate Security to the extent such act or proceeding is otherwise permitted pursuant to this Agreement.

## **19. Communications and Co-operation between the Lenders**

From time to time upon request therefor, each of the Agents shall as soon as practicable advise the other in writing of the particulars of the indebtedness and liability of the members of the Borrower Group to the Senior Lenders and Subordinate Lenders, as applicable, of all Security from the Borrower Group or any member or members of the Borrower Group held therefor and any other information pertaining to the Borrower Group, and may provide to each other information in respect of such matters as each party may see fit. Each member of the Borrower Group irrevocably consents to the disclosure of all such particulars and information.

## **20. No Waiver of this Agreement**

No right of the Senior Lenders to enforce the subordinations as provided in this Agreement shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of any member or members of the Borrower Group or by any act or failure to act on the part of the Senior Agent, the Senior Lenders or any of them or any agent of or trustee for the Senior Agent, the Senior Lenders or any of them, or by any non-compliance by a member or members of the Borrower Group with any of the agreements or instruments relating to the Subordinate Obligations or the Senior Obligations, regardless of any knowledge thereof which the Senior Lenders may have or be otherwise charged with. Without limitation of the foregoing, but in no way relieving any member or members of the Borrower Group of its obligations under this Agreement, the Senior Lenders may, at any time and from time to time, without the consent of the Subordinate Lenders and without impairing or releasing the subordination and other benefits provided in this Agreement or the obligations hereunder of the Subordinate Lenders to the Senior Lenders, do any one or more of the following:

- (a) amend, supplement, modify, restate or replace the Senior Credit Agreement or any of the Senior Security except that they may not: (A) increase the principal amount of the Senior Obligations under the Senior Credit Agreement by more than \$4,800,000 and US\$7,809,194.20, (B) re-advance the Term Facility unless in accordance with the limitation provided for in (A) above, (C) shorten the final maturity date (other than by acceleration) or extend the final maturity date of any of the Senior Obligations, or (D) increase any stated rate at which interest accrues in respect of any credit facility pursuant to the Senior Credit Agreement beyond 200 bps (which, for certainty, does not preclude the ability to charge default interest at a rate of an additional 2%);

- (b) sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner any assets pledged or mortgaged for or otherwise securing the Senior Obligations or any liability of any member or members of the Borrower Group or any liability incurred directly or indirectly in respect thereof;
- (c) settle or compromise any of the Senior Obligations or any other liability of any member or members of the Borrower Group (other than the Subordinate Obligations) or any security thereof or any liability incurred directly or indirectly in respect thereof, and apply any sums by whomsoever paid and however realized to the Senior Obligations in any manner or order;
- (d) exercise or delay in or refrain from exercising any right or remedy against any member or members of the Borrower Group and elect any remedy and otherwise deal freely with any member or members of the Borrower Group; and
- (e) grant time or other indulgences to any member or members of the Borrower Group and may give up or abstain from taking advantage of the Senior Security in whole or in part and may discharge any part or parts of or accept any composition or arrangements or realization on the Senior Security in such manner and when the Senior Lenders may deem expedient.

## **21. No Amendment**

The Subordinate Lenders may not without the prior written consent of the Senior Lenders:

- (a) cause the terms and conditions of the Subordinate Documents to be amended, modified or otherwise varied to (i) increase the principal amount of the Subordinate Obligations (other than an increase resulting from the issuance of paid in kind notes or the accrual or capitalization of interest in lieu of cash interest payments); (ii) increase the interest rate (which for greater certainty is 14% per annum on the date hereof with a default rate of interest of an additional 2% per annum); (iii) shorten the final maturity date of the Subordinate Obligations or any scheduled payment date of the Subordinate Obligations; (iv) amend any financial covenant contained in the Subordinate Credit Agreement unless (A) such financial covenants are loosened, (B) the Senior Credit Agreement is being similarly amended subject to any financial covenants retaining the same spread then existing between the Senior Credit Agreement and the Subordinate Credit Agreement, or (C) consent is provided by the Senior Lenders; or (v) obtain additional Encumbrances that are not also being granted to Senior Lenders;
- (b) cause to be more onerous or add any covenant of any member of the Borrower Group under the Subordinate Credit Agreement unless a corresponding amendment is made in the Senior Credit Agreement.

No amendment in contravention of this Section 21 shall be valid for the purposes of exercising any rights under this Agreement, provided, however, for greater certainty, such provisions shall remain valid as between the Subordinate Agent, the Subordinate Lenders and the Borrower Group.

**22. Consent by the Borrower Group**

Each member of the Borrower Group acknowledges and agrees that it shall not derive any rights hereunder and expressly consents to the ordering of priorities herein and the postponements and subordinations necessary to give effect thereto. Each member of the Borrower Group hereby consents to the entering into by each of the Lenders of this Agreement and consents to the exchange of, and access to, all documents and information as provided for in this Agreement. Nothing contained in this Agreement shall be construed as conferring any rights upon the Borrower Group or any member or members of the Borrower Group or upon any other Person not a party to this Agreement. The terms and conditions hereof are and shall be for the sole and exclusive benefit of the Lenders, as the case may be.

**23. Paramountcy, No Rights Conferred on Borrower Group**

Each of the Lenders acknowledges and agrees that, to the extent the terms and provisions of this Agreement are inconsistent with or conflict with their respective Financing Agreements, or any documentation or arrangements with respect thereto, the terms and provisions of this Agreement shall prevail. Nothing in this Agreement is intended to relieve the members of the Borrower Group of the obligation to repay to the Lenders the Obligations in accordance with the terms of the applicable Financing Agreements. Nothing in this Agreement shall create any rights in favour of any member of the Borrower Group and the covenants and agreements of the Senior Agent, the Senior Lenders, the Subordinate Agent and the Subordinate Lenders shall not be enforceable by any member of the Borrower Group. No consent of any member of the Borrower Group shall be necessary for any amendment to this Agreement by the other parties hereto. The Borrower agrees with the Subordinate Agent and the Subordinate Lenders that any amounts owing to the Subordinate Agent and the Subordinate Lenders under the Subordinate Documents that are not Permitted Payments shall, nonetheless, remain owing under the Subordinate Documents and shall accrue interest at the rates therein provided in accordance with the applicable terms of the Subordinate Documents.

**24. No Rights Conferred on Others**

Nothing in this Agreement shall be construed so as to:

- (a) entitle any party not a signatory to this Agreement (other than the Senior Lenders and the Subordinate Lenders) to receive any Proceeds of Realization: or
- (b) confer any rights upon any Person not a party to this Agreement (other than the Senior Lenders and the Subordinate Lenders), and the covenants and agreements of the Lenders contained herein shall only be enforceable as between the Lenders and shall not be enforceable by any other Person.

If any other Person other than the Lenders shall have any valid claim to Proceeds of Realization in priority to or on parity with any of the Lenders, then this Agreement shall not apply so as to diminish the rights (as such rights would have been but for this Agreement) of the Lenders to any Proceeds of Realization.

**25. Assignments**

Concurrently with the assignment of any of the Obligations by a Lender pursuant to the applicable Financing Agreement, the assignee shall execute an agreement in writing in

favour of the other parties hereto agreeing to be bound by the provisions hereof in the same manner and to the same extent as the assignor and shall provide an executed copy of such agreement to each of the Lenders; and such assignment shall not be effective and shall not relieve the assignor of any liability hereunder until such assignee is bound by the terms hereof. Notwithstanding any other provision of this Agreement, the liabilities, obligations and indebtedness of the Borrower Group to the Senior Agent and the Senior Lenders shall be governed by the Senior Documents and not by this Agreement except as otherwise expressly provided in the Senior Documents and the liabilities, obligations and indebtedness of the Borrower Group to the Subordinate Agent and the Subordinate Lenders shall be governed by the Subordinate Documents and not by this Agreement except as otherwise expressly provided in the Subordinate Documents.

## **26. Adhesion Agreement**

The Borrower agrees that each Person which provides a guarantee of the obligations of the Borrower in favour of the Senior Agent after the date hereof shall immediately execute an adhesion agreement whereby it acknowledges and agrees to be bound by the terms of this Agreement as if an original party thereto. Such adhesion agreement shall be in form and substance acceptable to the Senior Agent and Subordinate Agent.

## **27. Notices**

For purposes hereof, notices shall be given to any party hereto at the following address for such party (or such other address as such party shall notify the other parties hereto by notice complying with this Section 27). Any notice or communication to be given under this Agreement shall be in writing and may be effectively given by delivering (whether by courier or personal delivery) the same to the addresses set out below or by sending the same by prepaid registered mail to the parties at such addresses or by facsimile to the parties at the facsimile numbers set out below. Any notice so mailed shall be deemed to have been received on the fifth Business Day next following the registered mailing of such notice, provided that postal service is in normal operation during such time. Any facsimile notice shall be deemed to have been received on transmission (and receipt of confirmation of transmission) if sent by any party to this Agreement before 4:00 p.m. Toronto time on a Business Day and, if not, on the next Business Day following transmission. Any party may from time to time notify the other parties, in accordance with the provisions of this Section 27, of any change of its address or facsimile number which after such notification, until changed by like notice, shall be the address or facsimile number, as the case may be, of such party for all purposes of this Agreement.

### **(a) Borrower and each other Obligor:**

Joriki Inc.  
c/o Torquest Partners Inc.  
Brookfield Place  
TD Canada Trust Tower  
161 Bay Street, Suite 4240  
Toronto, ON M5J 2S1

Attention: Michael Salisbury  
Facsimile: (416) 956-7001



with a copy to:

Torys LLP  
79 Wellington St. W.  
Box 270, TD South Tower  
Toronto, ON M5K 1N2

Attention: Tom Zverina  
Facsimile: (416) 865-7380

(b) Senior Agent for and on behalf of the Senior Lenders:

The Bank of Nova Scotia  
40 King Street West  
Scotia Plaza, 55th Floor  
Toronto, ON M5H 1H1

Attention: Head, Agency Services  
Facsimile: (416) 866-3329

with a copy to:

Davies Ward Phillips & Vineberg LLP  
155 Wellington Street West  
Toronto, ON M5V 3J7

Attention: Joel Scoler  
Facsimile: (416) 863-0871

(c) Subordinate Agent for and on behalf of the Subordinate Lenders:

Roynat Capital Inc.  
625 Cochrane Dr., Suite #200  
Markham, ON  
L3R 9R9

Attention: Jehan Rajah  
Email: Jehan.Rajah@Roynat.com

Any failure by the Senior Agent to provide notice to the Subordinate Agent of whom it has not been given notice or in respect of whom it has not been provided with an address for notice in accordance with this Section 27 shall not affect the rights of the Senior Agent that would otherwise arise or result from the delivery of such notice.

## **28. Waivers**

No waiver shall be deemed to be made by any of the Lenders of its rights hereunder, unless the same shall be in writing signed on behalf of such Lender and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of such Lender or the obligations of any other party hereto to such Lender in any other respect at any other time.

**29. Currency**

Unless stated otherwise in this Agreement, all references to dollar amounts (without further descriptions) will mean Canadian dollars.

**30. Successors and Assigns**

This Agreement shall enure to the benefit of and shall be binding upon the respective successors and permitted assigns of the parties hereto.

**31. Severability**

Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

**32. Counterparts**

This Agreement may be executed in one or more counterparts, either in original or telecopy form, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

**33. Governing Law**

This Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein and each party attorns to the non-exclusive jurisdiction of the Courts of the Province of Ontario.

**34. Further Assurances**

Without limiting the foregoing, the Borrower, each Obligor and the Subordinate Lenders will from time to time at the expense of the Borrower execute and deliver such other instruments, agreements and other documents, and take such actions, as are necessary or desirable and as the Senior Agent may reasonably request to effectuate this Agreement and the subordination and postponement herein provided or to better assure to the Senior Agent and the Senior Lenders their respective rights hereunder.

**35. Agents Binding Lenders**

(a) The Senior Agent hereby represents, warrants and confirms that it is authorized to bind the Senior Lenders (whether current or future lenders) by executing and delivering this Agreement on their behalf and that each Senior Lender is contractually bound by the terms of this Agreement immediately upon becoming a Senior Lender. Each reference in this Agreement to the Senior Lenders shall be contractually binding on each Senior Lender as if they were an original party hereto notwithstanding that they have not executed this Agreement. The Senior Agent hereby covenants and agrees that it will provide a copy of this Agreement to each Senior Lender along with any amendment entered into from time to time and will obtain such assurances that it requires in order to ensure that the provisions contained in this Section 35(a) are true and correct at all times. The Senior Agent shall provide such evidence to the

Subordinate Lender, on request of the Subordinate Agent, of the Senior Lenders being bound by the terms of this Agreement. Should the Senior Agent require that the Senior Lenders become a party to this Agreement at any time and should the Senior Lenders execute an adhesion agreement in form and substance satisfactory to the Senior Agent and the Subordinate Agent, acting reasonably, the terms of this Section 35(a) will thereafter cease to be applicable. The Senior Lenders agree to abide by the terms of any such request by the Senior Agent.

(b) The Subordinate Agent hereby represents, warrants and confirms that it is authorized to bind the Subordinate Lenders (whether current or future lenders) by executing and delivering this Agreement on their behalf and that each Subordinate Lender is contractually bound by the terms of this Agreement immediately upon becoming a Subordinate Lender. Each reference in this Agreement to the Subordinate Lenders shall be contractually binding on each Subordinate Lender as if they were an original party hereto notwithstanding that they have not executed this Agreement. The Subordinate Agent hereby covenants and agrees that it will provide a copy of this Agreement to each Subordinate Lender along with any amendment entered into from time to time and will obtain such assurances that it requires in order to ensure that the provisions contained in this Section 35(b) are true and correct at all times. The Subordinate Agent shall provide to the Senior Agent such evidence, on request of the Senior Agent, of the Subordinate Lenders being bound by the terms of this Agreement. Should the Subordinate Agent require that the Subordinate Lenders become a party to this Agreement at any time and should the Subordinate Lenders execute an adhesion agreement in form and substance satisfactory to the Senior Agent and the Subordinate Agent, acting reasonably, the terms of this Section 35(b) will thereafter cease to be applicable. The Subordinate Lenders agree to abide by the terms of any such request by the Subordinate Agent.

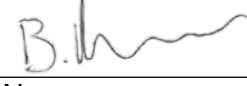
**[Signature pages follow.]**

**IN WITNESS WHEREOF** each of the parties hereto has duly executed this Agreement as of the day and year first above written.


**SENIOR AGENT:**

**THE BANK OF NOVA SCOTIA**, as  
Senior Agent for and on behalf of itself  
and each Senior Lender

by

  
Name: Brana Ramanathan

Title: Associate

  
Name: Nick Dinkha

Title: Director

**SUBORDINATE AGENT:**

**ROYNAT CAPITAL INC.**, as Subordinate  
Agent for and on behalf of itself and each  
Subordinate Lender


by


  
\_\_\_\_\_  
Name: Jehan Rajah  
Title: Director & District Manger  
\_\_\_\_\_  
Name: Doug Petten  
Title: Director

**BORROWER:**

**JORIKI INC.**

by

  
\_\_\_\_\_  
Name: Jeff McLay  
Title: Chief Financial Officer

  
\_\_\_\_\_  
Name: David Schelter  
Title: Chief Operating Officer

*Intercreditor Agreement (Joriki)*

#00011

**BORROWER:**

**JORIKI INC.**

by

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Name: Jeff McLay  
Title: Chief Financial Officer



---

Name: David Schelter  
Title: Chief Operating Officer

**GUARANTORS:****JORIKI TOPCO INC.**by 

Name: Jeff McLay  
Title: Chief Financial Officer

Name: David Schelter  
Title: Chief Operating Officer

**JORIKI USA INC.**by 

Name: Jeff McLay  
Title: Treasurer



Name: Douglas Glade  
Title: Chief Executive Officer

*Intercreditor Agreement (Joriki)*

#00015



**GUARANTORS:**

**JORIKI TOPCO INC.**

by

\_\_\_\_\_  
Name: Jeff McLay  
Title: Chief Financial Officer



\_\_\_\_\_  
Name: David Schelter  
Title: Chief Operating Officer

**JORIKI USA INC.**

by

\_\_\_\_\_  
Name: Jeff McLay  
Title: Treasurer

\_\_\_\_\_  
Name: Douglas Glade  
Title: Chief Executive Officer

**THIS IS EXHIBIT "O"**  
**TO THE AFFIDAVIT OF MICHAEL G. DEVON**  
**SWORN BEFORE ME OVER VIDEOCONFERENCE**  
**THIS 22<sup>nd</sup> DAY OF JANUARY, 2025**

*Madeline Cummings*

---

Commissioner for Taking Affidavits

## AUCTION AND LIQUIDATION SERVICES AGREEMENT

THIS agreement dated for reference the 22nd day of January, 2025

### MADE BETWEEN:

**JORIKI INC.**, a corporation incorporated pursuant to the laws of Ontario having an address of 3431 McNicoll Avenue, Scarborough, Ontario M1V 2V3

ATTENTION: Michael Devon, CFO  
Email: [mdevon@jorikiinc.com](mailto:mdevon@jorikiinc.com)

(hereinafter referred to as “**Joriki**”)

OF THE FIRST PART

### AND:

**MAYNARDS INDUSTRIES II CANADA LTD.**, a corporation incorporated pursuant to the laws of British Columbia having an address of Suite 130, 49 Dunlevy Ave., Vancouver, BC, V6A 3A3

ATTENTION: Aaron Stewardson  
Email: [astewardson@maynards.com](mailto:astewardson@maynards.com)

(hereinafter referred to as “**Maynards**”)

OF THE SECOND PART

### WHEREAS:

- A. Joriki has filed a Notice of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act* (Canada) and Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed as Proposal Trustee of Joriki (the “**BIA Proceedings**”).
- B. Joriki and Joriki TopCo Inc. (the “**CCAA Applicants**”) intend to convert the BIA Proceedings to proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”), and seek an initial order (the “**Initial CCAA Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), pursuant to which, *inter alia*, A&M would be appointed as the monitor of the CCAA Applicants (in such capacity, the “**Monitor**”).
- C. Joriki and Maynards have agreed to enter into this Auction and Liquidation Services Agreement (the “**Agreement**”) respecting the sale of the assets located at 885 Sandy



Beach Rd, Pickering, Ontario (the “**Premises**”) and listed in Schedule “A” hereto (collectively, the “**Assets**”) by a private sale and/or a one-day online auction (the “**Auction**”).

- D. Joriki seeks to retain Maynards, subject to receiving Court Approval (as defined below), to market and sell the Assets upon the terms and conditions hereof.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that Joriki and Maynards agree as follows:

1. **RETENTION OF MAYNARDS**

2. Joriki hereby appoints Maynards, and Maynards hereby agrees to serve as Joriki’s exclusive agent and mandatary for the limited purpose of carrying out a sales program (the “**Sale Process**”) to sell the Assets by private sale and/or the Auction in accordance with the terms and conditions of this Agreement.
- 2.1 Maynards will not, and has no authority to, incur any liability or obligation on behalf of Joriki, unless otherwise specifically authorized and approved by Joriki.
- 2.2 The parties acknowledge and agree that Maynards is an independent contractor being engaged in accordance with the terms of this Agreement and is not an employee, employer, partner or joint venturer of Joriki.
- 2.3 Joriki and Maynards hereby agree and acknowledge that the parties’ obligations hereunder are subject to Court approval of, among other things, the engagement of Maynards, this Agreement and the Sale Process generally (the “**Court Approval**”).

3. **SALE PROCESS**

- 3.1 Joriki shall provide, or make commercially reasonable efforts to provide, to Maynards and its agents, employees and representatives, access to the Assets and the Premises from the date of Court Approval (or such earlier date as agreed to by Joriki) (the “**Commencement Date**”) until March 31, 2025, or such later date as agreed by the parties in writing (the “**End Date**”), for the purposes of showing the Assets to prospective purchasers, preparing for and conducting the Sale Process, completing all sales, and removing the Assets upon their sale.
- 3.2 The Sale Process shall commence on the Commencement Date and continue until the End Date (the “**Sale Period**”).
- 3.3 Joriki consents and agrees to the sale of the Assets by Maynards and Maynards agrees to conduct the Sale Process for and on behalf of Joriki based on the terms of this Agreement.
- 3.4 If an Auction is to be held, Maynards shall consult with Joriki and the Monitor as to the timing for when such Auction will be held.

3.5 Maynards will carry out the Sale Process, including the Auction, all sales and all other related activities in an orderly and professional manner, in accordance with industry practices.

3.6 Maynards shall be permitted to use the "Joriki Inc." name for promotional purposes, including in any advertisements and marketing materials.

#### 4. **MAYNARDS FEES AND EXPENSES**

4.1 Maynards will be paid a 15% buyer's premium with respect to all sales of the Assets ("**Buyer's Premium**"), which will be added to the purchase price paid by the purchasers to Maynards in respect of the Assets.

4.2 In addition to the Buyer's Premium, Maynards shall be reimbursed by Joriki for all reasonable out of pocket expenses related to the Sale Process (the "**Costs**") incurred by Maynards in preparing for and conducting the Sale Process, including but not limited to marketing, travel, set-up, and checkout costs, up to \$60,000 (in the aggregate).

4.3 Within 14 days following the conclusion of the Auction, the proceeds of sale, net of the Buyer's Premium, Costs, all applicable taxes and any merchant banking charges (together, the "**Gross Sale Proceeds**"), shall be paid by Maynards to Joriki in a manner agreed upon by the parties, with the consent of the Monitor.

4.4 Maynards shall, promptly following the Auction, provide Joriki and the Monitor with a detailed written accounting describing each Asset sold and the purchase price attributed thereto and the applicable Gross Sale Proceeds in a form satisfactory to Joriki acting reasonably.

#### 5. **TAXES**

5.1 Maynards shall collect, and promptly pay to the applicable authority and confirm such payment to Joriki, all social services tax, provincial sales tax (if applicable), goods and services tax, harmonized sales tax and any other tax resulting from any sale transaction entered into by Maynards with respect to any of the Assets.

5.2 Maynards shall indemnify and hold Joriki harmless from any and all demands, liabilities or claims, including, but not limited to, fines, penalties, losses, costs and expenses, which Joriki may sustain, incur or be subject to, arising out of, or by reason of, any failure by Maynards to collect, pay or remit any applicable taxes in relation to the sale of the Assets in accordance with the Sales Process (including without limiting the generality of the foregoing in respect of the Buyer's Premium).

#### 6. **DUTIES OF MAYNARDS**

6.1 Except as otherwise provided in this Agreement, Maynards shall at its own cost and expense:

- (a) use commercially reasonable best efforts to conduct the Sale Process in accordance with its terms and the terms of this Agreement;

- (b) provide sufficient licensed auctioneers and other personnel as is generally required for the holding of the Sale Process;
- (c) supervise the inspection of the Assets by potential purchasers prior to the Auction;
- (d) prepare for, arrange, conduct and conclude the Sale Process including, but not limited to, advertising, auction-related set-up, administrative services, collection of proceeds, banking, security/check out personnel, etc.;
- (e) advertise and promote the Auction;
- (f) organize, inventory, tag and lot the Assets for the Sale Process;
- (g) provide administrative services relating to the transfer of ownership of Assets to purchasers such that title to the Assets can be conveyed to the purchasers;
- (h) allow representatives of Joriki and the Monitor to be present at any pre-inspections of the Assets, set-up related to the Auction, the Auction and to have access to all of Maynard's records concerning the sale of the Assets;
- (i) provide for the removal from the Premises of any Assets purchased through a private sale and/or at the Auction not abandoned on the Premises by such purchaser prior to the End Date;
- (j) provide the accounting described in Section 4.4.; and
- (k) shall not subcontract the performance of any of its duties or obligations under this Agreement to any person, except in connection with the marketing, lotting and checkout of the Assets under the Sales Process.

## **7. COVENANTS, REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE ASSETS**

- 7.1 Joriki shall deliver to Maynards a copy of all pertinent documents that are in the possession of Joriki if any, relating to the Assets, including, without limitation, all documents of title, operating manuals, warranties, and all documents respecting registrations.
- 7.2 Upon completion of the Sale Process contemplated hereby, Maynards shall oversee the removal or preparation of the removal of the Assets from the Premises. Maynards shall leave the Premises in an orderly and broom-swept manner, but shall not be required to remedy or repair any condition of the Premises resulting from the removal of Assets, except to the extent required to comply with applicable building or electrical codes or to the extent incurred as a result of the negligence of Maynards in the performance of its obligations hereunder. For greater certainty, Maynards shall not be responsible to remedy any pre-existing condition on the Premises prior to the Auction nor responsible to remove remaining or unsold Assets. The obligations of Maynard under this agreement extend only to the portions of the Premises utilized by it during the Sales Process.

- 7.3 The Assets are provided to and shall be sold by the Maynards through a private sale and/or at the Auction, on an "as is, where is" basis with no representation or warranty of any kind being made by Maynards, Joriki or the Monitor to potential or final buyers, including as to quality, condition or fitness for any purpose. Except for Joriki's representations and warranties expressly set forth in this Agreement, Maynards acknowledges that it has made such inspections of the Assets as it deems appropriate and that neither Joriki, the Monitor nor any other person has made any representation, warranty or condition, whether statutory, express or implied, oral or written, legal, equitable, collateral or otherwise, as to title, encumbrances, fitness for purpose, marketability, condition, quantity or quality thereof or in respect of any other matter or thing whatsoever.
- 7.4 Each of the parties acknowledges and agrees that:
- (a) it is duly authorized (subject, in the case of Joriki, to Court Approval) to enter into and be bound by the terms of this Agreement and to carry out the terms of this Agreement;
  - (b) it has consulted with and been advised by its own solicitors before entering into this Agreement, has read same and knows the contents thereof;
  - (c) all the terms and conditions of this Agreement shall survive the closing of the transactions contemplated hereby; and
  - (d) Maynards' engagement and the validity of this Agreement remain subject to Court Approval.
- 7.5 Maynards represents, warrants and acknowledges to Joriki that:
- (a) Maynards is a corporation duly incorporated, organized and subsisting under the laws of British Columbia;
  - (b) Maynards has conducted its own due diligence, independent inspection, and investigation respecting the Assets and is satisfied with the Assets in all respects;
  - (c) Maynards has good and sufficient power and authority to enter into this Agreement and to undertake the services contemplated by this Agreement;
  - (d) this Agreement constitutes a valid and legally binding obligation of Maynards, enforceable against Maynards in accordance with its terms; and
  - (e) Maynards holds all required permits and licenses required to perform its obligations under this Agreement.
- 7.6 The representations, warranties and covenants of Maynards set forth in this Agreement will survive completion of the transactions contemplated by this Agreement.

## 8. **CONDITIONS**

8.1 The obligations of the parties hereunder are subject to the following conditions:

- (a) the approval by the Court of this Agreement; and
- (b) there being no order by any court of competent jurisdiction in effect restraining the holding of the Auction.

## 9. **COSTS OF PRESERVATION AND INSURANCE**

9.1 Joriki agrees and acknowledges that Maynards shall have no obligation to pay for any rent, utilities (including, without limitation, gas, water, heat and hydro) or security for the Premises, and that such obligations shall remain the obligations of Joriki.

9.2 Maynards shall not be responsible for the following costs, even if such are or become payable:

- (i) lease payments to third parties in respect of any Asset;
- (ii) any pre-existing environmental costs;
- (iii) any legal costs associated with dealing with liens against the Assets (unless such liens arise through or as a result of Maynard's possession of any of the Assets);
- (iv) any and all product or inventory-related liabilities whatsoever, except as may be incurred as a result of the actions of Maynards with respect to the Assets during the Sale Period; and
- (v) any product warranties or liabilities.

9.3 Joriki shall maintain all existing insurance coverage on the Assets until all Assets are removed from the Premises and will provide to Maynards proof of insurance upon request.

9.4 Maynards shall maintain insurance during the Sale Period, and will provide to Joriki proof of insurance, with respect to any public liability which could flow from Maynards' activities, naming the Joriki as beneficiary of such insurance, providing for coverage of not less than \$5,000,000 per occurrence and otherwise in a form satisfactory to the Joriki acting reasonably.

## 10. **TERMINATION**

10.1 This Agreement may be terminated:

- (a) at any time by mutual written consent of the Joriki and Maynards;
- (b) by Joriki, on the one hand, or Maynards, on the other hand, if Court Approval has not occurred on or before February 7, 2025;



- (c) if Maynards fails to comply with any of the provisions of this Agreement in any material respect (including any violation which prevents the satisfaction of any condition set forth in Section 8.1), Joriki shall be entitled at its option to terminate this Agreement, but only if Joriki provides Maynards with three business days to remedy such failure and Maynards has not done so. In such event, any of the Assets not sold may, at Joriki's option, be sold or resold by the Joriki in such manner and on such terms and conditions as Joriki in its sole discretion determines; and
  - (d) if Joriki fails to comply with any of its material obligations under this agreement (including any violation which prevents the satisfaction of any condition set forth in Section 8.1), Maynards shall be entitled at its option to terminate this Agreement, but only if Maynards provides Joriki with three business days to remedy such failure and Joriki has not done so.
- 10.2 A copy of any notice or agreement of termination in this Section 10 shall be concurrently provided to the Monitor at the time of delivery to the other party.
- 11. **MISCELLANEOUS**
- 11.1 All references to currency in this Agreement and in the schedule hereto are to lawful currency of Canada.
- 11.2 If any dispute arises under this Agreement, such dispute shall be determined by the Court in the CCAA Proceedings.
- 11.3 If the doing of any act pursuant to this Agreement falls on a day on a bank holiday or weekend, then the time for the doing of such act shall be deemed to be the next day that is not a bank holiday or weekend.
- 11.4 Any notice, request, instruction or other communication to be given hereunder by any party to the other shall be in writing and effective when delivered personally or telecopied to the addresses and/or electronic mail set forth at the beginning of this Agreement.
- 11.5 No waiver by either party of any of the conditions contained in this Agreement or of any breach of any of the covenants contained in this Agreement shall have effect or be binding upon that party unless expressed in writing and any waiver so given shall extend only to the particular condition or breach so waived and shall not limit or affect any rights with respect to any other condition or breach or any future breach.
- 11.6 This Agreement and the attached Schedule constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior proposals, communications and agreements, whether written or oral.
- 11.7 This Agreement may be amended or modified only by an instrument in writing executed and delivered by the parties hereto subsequent to the date hereof.

- 11.8 The parties covenant to execute such further documents and do such further acts as may be required to implement the terms of this Agreement.
- 11.9 All stipulations in this Agreement as to time are strictly of the essence.
- 11.10 This Agreement shall be governed by the laws in effect in the Province of Ontario and the parties hereby expressly attorn to the jurisdiction of the courts of that Province.
- 11.11 This Agreement may be executed in counterparts by the parties hereto and executed counterparts may be delivered by facsimile and such execution and delivery shall be valid for all intents and purposes and the executed counterparts shall together form one document.
12. Maynards shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the Joriki.

**EXECUTED** at Toronto, Ontario, this 22nd day of January, 2025.

**MAYNARDS INDUSTRIES II CANADA LTD.**

by its authorized signatory:

Per: 

Name: Aaron Stewardson, CPA  
Title: COO

**JORIKI INC.**

By its authorized signatory

Per: 

Name: Michael Devon  
Title: CFO

**SCHEDULE "A"**

**ASSETS**

**Maynards Industries Canada Appraisals Ltd**  
**Joriki Inc.- Pickering Facility**  
**Schedule A**

Item	Yr.	Manufacturer	Model	DESCRIPTION	VIN#
1	2012	Reymisa/ York	YLA0170S	Chiller/ Cooling tower (On Roof)	2FYM016556
2				Water Treatment system w/ Delmark SS Filter, (2) Polypropylene tanks	
3				Misc. in front rooms- Wash and spray units, maint. Spare parts, spare machines, coders	
4				Approx.. 180 sections of Drive-Through Racking throughout plant	
5		Gardner Denver	Electra Saver	Rotary Screw Compressor	
6		Kaeser	DSD 150	Rotary Screw Compressor, 17,600 hrs	
7		Chicago Pneumatic	CPE 100	Rotary Screw Compressor	
8		Kaeser	TF 340	(2) Air dryer	
9		Gardner Denver	Integra	Air dryer	
10	2018	Kaeser	BSD 50	Rotary Screw Compressor	
11				Parker air dryer and Misc. Receiving Air tanks	
12		Raymond		Electric Pallet truck	
13		Sevens		Water softening System	
14	2016	Muira	LX 200 07	Boiler	
15	2022	Muira	LX-0100SG-12-LV	Boiler	CA01220589
16	2013	Muira	LX-100-SG	Boiler	
17		APV/ Simmtech		Juice Pasteurizer	
18				Process Tank, (2) Hotset Units, APV Sterilizer	
19				(8) 4-6,000 Gallon SS Tanks w/ Cardinal Level Meters	
20				(2) HFSS 55 and HFLS 55 Vert/ Horiz. SS Tanks	
21				(2) Vert. 3,000 Gall SS Tanks	
22				(2) Mueller 5000 Gall SS Lined Tanks	
		<b>FILLING LINE 1</b>			
23				Batch and Hold Tanks, (3) Imjae Coders, Wepackit 700 Case Packer, Wepackit 400TT Case Taper, Fortress and Top Tier Palletizer, CP Pasteurizer, all conveyors, pumps and controls	
		<b>FILLING LINE 2</b>			
24	2005	Evergreen	EH-3	1.75/ 1.89 Litre Filler	
25				Batch and Hold Tanks, (3) Imjae Coders,CIP Skid, GEA Homogenizer, Wepackit 700 Case Packer, Wepackit 400TT Case Taper, Fortress and Top Tier Palletizer, all conveyors, pumps and controls, Top Tier Paletizer	
		<b>FILLING LINE 3</b>			
26	1990	Evergreen	EH-1	1.75 Litre Filler	
27				Batch and Hold Tanks, (3) Imjae Coders, Pasteurizer, Wepackit 700 Case Packer, Wepackit 400TT Case Taper, Fortress and Top Tier Palletizer, all conveyors, pumps and controls, Pallitizer	
		<b>FILLING LINE 4</b>			
28				Batch and Hold Tanks, 2017, Enercon Scanner, (2) Ink Jet Coders, Accumulator, Bevco Rinser, , Filtec, Image Coders, Hamrick Model 600D Case Packer, 2017 Douglas Contour Shrink Packer, Top Tier Palletizer	
		<b>FILLING LINE 5</b>			
29	2017	Procomac	ESL/ Aseptic	Perlomac GEA 1.75/ 1.54 Filler	
30				with Depalletizer, Case Packer, Labeller, Aseptic Tank,Case Erector, Overwrapper, all conveyor, tanks, pumps etc on line, Top Tier Palletizer	
31		Wepackit	700 CP	Case Packer (in storage)	
32		Toyota	7FB5U18	3 Wheel Forklift	22402
33		Toyota	7FB5U18	3 Wheel Forklift	26286
34		Toyota	8FBE2OU	Electric Forklift	25308
35		Toyota	7FBEU18	3 Wheel Forklift	26260
36		Toyota	8FGCU 25	LGP Forklift	
37	2008	Lantech	Q300	Pallet Wrapper	
38		SWF	Tray-Matic	Case Erector	
39		Wexxar	WF 30	Case Former	
40		(2) Wexxar	WF 20	Case Former	
41		Wexxar	WF-2H	Case Former	
42	2005	Arpac	BPTW 53	Shrink Packer	
43		Hamrick	360D	Case Packer	01-1273
44	2018	Thiele Technologies	TF 400V	Auto Tray Former	
45		Phoenix	PLP-2150	Pallet Wrapper	200633473
46		Phoenix	PLP-2150	Pallet Wrapper	21015754
47		(3) Ryson	1300-400-B45.23	Spiral Conveyors, PLC	
48		Tenant	5680	Portable Scrubber	
49				Assorted Spare Parts, Motors and Support Equipment throughout Main Plant	
50				(2) Approx. 6,500 Vettical Raw Material Tanks, (4) Approx 5000 Gal. Horizontal Tanks, (3) Misc. SS Tanks	
51				Lab Area	

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

Court File No. CV-25-00735458-00CL

AND IN THE MATTER OF AND IN THE MATTER OF A PLAN OF  
COMPROMISE OR ARRANGEMENT OF JORIKI TOPCO INC., JORIKI INC.,  
AND JORIKI USA INC.

Applicants

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

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**AFFIDAVIT OF MICHAEL G. DEVON**  
(sworn January 22, 2025)

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**GOODMANS LLP**  
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Lawyers for the Applicants

Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	TUESDAY, THE 28 <sup>TH</sup>
	)	
JUSTICE OSBORNE	)	DAY OF JANUARY, 2025

**IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI  
INC.**

(the “**Applicants**”)

**INITIAL ORDER**

**THIS APPLICATION**, made by the Applicants, including to continue the proceedings commenced by Joriki Inc. by the filing of a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) bearing court/estate file no. 31-3170452 (the “**NOI Proceeding**”) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), for an Initial Order was heard this day [by **videoconference via zoom**].

**ON READING** the affidavit of Michael G. Devon sworn January 22, 2025, and the Exhibits thereto (the “**Devon Affidavit**”) and the pre-filing report of the proposed monitor, Alvarez and Marsal Canada Inc. (“**A&M**”) dated January ●, 2025 (the “**Pre-Filing Report**”), and on being advised that A&M was appointed as the proposal trustee in the NOI Proceeding (the “**Proposal Trustee**”), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, counsel for A&M, counsel for The Bank of Nova Scotia, in its capacity as administrative agent (in such capacity, the “**Agent**”) for the senior lenders of the Applicants [NTD: Insert any other parties in attendance], and counsel for the other parties

listed on the counsel slip, and on reading the consent of A&M to act as the monitor (in such capacity, the “**Monitor**”),

### **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Devon Affidavit.

### **APPLICATION**

3. **THIS COURT ORDERS** that the Applicants are companies to which the CCAA applies.

4. **THIS COURT ORDERS** that the NOI Proceeding is hereby taken up and continued under the CCAA and that, as of such date, the provisions of Part III of the BIA shall have no further application to Joriki Inc., provided that (a) any and all steps, agreements and procedures validly taken, done or entered into by Joriki Inc. or the Proposal Trustee during the NOI Proceeding shall remain valid and binding, and (b) nothing herein shall affect, vary, derogate from, limit or amend, and A&M shall continue to have the benefit of, any and all of the rights, approvals and protections in favour of the Proposal Trustee at law or pursuant to the BIA or otherwise.

5. **THIS COURT ORDERS** that, notwithstanding Section 50.4(8) of the BIA, Joriki Inc. shall not be deemed to have made an assignment in bankruptcy as a result of not having filed a proposal with the official receiver.

6. **THIS COURT ORDERS** that A&M may take all necessary steps in furtherance of its discharge as Proposal Trustee, including the taxation of its fees and disbursements, in the within CCAA proceedings.

## PLAN OF ARRANGEMENT

7. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further Order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

## POSSESSION OF PROPERTY AND OPERATIONS

8. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and the Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, contractors, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

9. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the Devon Affidavit or, with the prior written consent of the Monitor and the DIP Lender (as defined below), replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall: (i) not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System; (ii) be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System; and (iii) be, in its capacity as provider of the Cash Management System, an unaffected creditor under a Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.



10. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on, or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, retention payments, long term incentive plan payments and reimbursable expenses payable prior to, on, or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) with the prior written consent of the Monitor, (i) amounts owing for goods and services actually supplied to any of the Applicants, and (ii) amounts owing, if any, for services rendered by the professional advisors to the Agent, in both instances prior to the date of this Order; and
- (c) the fees and disbursements of any Assistants retained or employed by any of the Applicants at their standard rates and charges.

11. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred in carrying on the Business in the ordinary course after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to any of the Applicants on or following the date of this Order.

12. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be

deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan and (iii) income taxes;

- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by any of the Applicants in connection with the sale of goods and services by any of the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by any of the Applicants.

13. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the applicable Applicant shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

14. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (i) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any of the Applicants to any of their creditors as of this date; (ii) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (iii) to not grant credit or incur liabilities except in the ordinary course of the Business.

**RESTRUCTURING**

15. **THIS COURT ORDERS** that each Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding CA\$250,000 in any one transaction or CA\$1,000,000 in the aggregate;
- (b) disclaim such of its arrangements or agreements of any nature whatsoever with whomever, whether oral or written, as such Applicant deems appropriate, in accordance with Section 32 of the CCAA;
- (c) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (d) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing;

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business.

16. **THIS COURT ORDERS** that the applicable Applicant shall provide each of the relevant landlords with notice of the applicable Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the applicable Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the applicable Applicant, or by further Order of this Court upon application by the applicable Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the applicable Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided

for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the applicable Applicant's claim to the fixtures in dispute.

17. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the applicable Applicant and the Monitor 24 hours' prior written notice and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the applicable Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE APPLICANTS, THEIR BUSINESS OR THEIR PROPERTY**

18. **THIS COURT ORDERS** that until and including February 28, 2025, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**", and collectively, "**Proceedings**") shall be commenced or continued against or in respect of any of the Applicants or the Monitor, or any of their respective employees, advisors (including counsel) or other representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Applicants or their respective employees, advisors (including counsel) or other representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

19. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of any of the Applicants or the Monitor, or any of their respective employees, advisors (including counsel) or other representatives acting in such capacities, or affecting the Business or

the Property are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower any of the Applicants to carry on any business which they are not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

20. **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence, authorization or permit in favour of or held by any of the Applicants, except with the prior written consent of the Applicants and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

21. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with any of the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, cash management services, payroll services, benefit services, accounting services, insurance, transportation services, warehouse and logistics services, utility or other services to the Business or any of the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by any of the Applicants or exercising any other remedy provided under the agreements or arrangements, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the applicable Applicant in accordance with the normal payment practices of the applicable Applicant or such other practices as may be agreed upon by the supplier or service provider and each applicable Applicant and the Monitor, or as may be ordered by this Court.

## **NON-DEROGATION OF RIGHTS**

22. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

23. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Applicants (the “**Directors and Officers**”) with respect to any claim against the Directors or Officers that arose before the date hereof and that relates to any obligations of any of the Applicants whereby the Directors and Officers are alleged under any law to be liable in their capacity as the Directors and Officers for the payment or performance of such obligations, until a Plan in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

## **DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE**

24. **THIS COURT ORDERS** that the Applicants shall indemnify the Directors and Officers against obligations and liabilities that they may incur as a director or officer of any of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any Director or Officer, the obligation or liability was incurred as a result of the Director’s or Officer’s gross negligence or wilful misconduct (the “**D&O Indemnity**”).

25. **THIS COURT ORDERS** that the Directors and Officers shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of CA\$200,000, unless permitted by further Order of this Court, as security for the D&O Indemnity provided in paragraph 24 of this Order. The Directors’ Charge shall have the priority set out in paragraphs 44 and 46 herein.

26. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary: (i) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and (ii) the Directors and Officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order.

#### **APPOINTMENT OF MONITOR**

27. **THIS COURT ORDERS** that A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

28. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender, its counsel and its financial advisor of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis as agreed with the DIP Lender;
- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the

- Monitor and delivered to the DIP Lender, its counsel and its financial advisor on a periodic basis as agreed with the DIP Lender;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
  - (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
  - (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
  - (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
  - (i) perform such other duties as are required by this Order or by this Court from time to time.

29. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or the Property, or any part thereof.

30. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations



thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

31. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

32. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, the Monitor, its directors, officers, employees, counsel and other representatives acting in such capacities shall incur no liability or obligation as a result of the Monitor’s appointment or the carrying out by it of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA or any applicable legislation.

33. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, whether incurred prior to, on or subsequent to the date of this Order, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on such terms as the parties may agree and, in addition, the Monitor, counsel to the Monitor and counsel to the Applicants are authorized to maintain their respective retainers, if any, provided by the Applicants prior to the commencement of these proceedings, to be held by

them as security for payment of their respective fees and disbursements outstanding from time to time.

34. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of CA\$700,000, unless permitted by further Order of this Court, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 44 and 46 hereof.

#### **KEY EMPLOYEE RETENTION PLAN**

36. **THIS COURT ORDERS** that the key employee retention plan (the “**KERP**”), as described in the Devon Affidavit and the Pre-Filing Report, is hereby authorized and approved, and the Applicants are authorized to make the payments contemplated under the KERP in accordance with the terms and conditions of the KERP, including all payments contemplated under the Pre-Filing KERP.

37. **THIS COURT ORDERS** that the key employees under the KERP shall be entitled to the benefit of and are hereby granted a charge (the “**KERP Charge**”) on the Property, which charge shall not exceed an aggregate amount of CA\$487,500, unless permitted by further Order of this Court, to secure any payments to the key employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 44 and 46 hereof.

#### **DIP FINANCING**

38. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow and provide guarantees, as the case may be, under a credit facility from the Senior Lenders (in such capacity, the “**DIP Lender**”) in order to finance the Applicants’ working capital requirements and other general corporate purposes and capital expenditures, provided that

borrowings under such credit facility shall not exceed the principal amount of CA\$1,200,000 unless permitted by further Order of this Court.

39. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the DIP Term Sheet between the Applicants and the DIP Lender dated as of January ●, 2025, in the form attached to [NTD: To specify] with such minor modifications or amendments that may be agreed to by the parties and consented to by the Monitor (the “**DIP Term Sheet**”).

40. **THIS COURT ORDERS** that each of the Applicants is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, including the DIP Term Sheet, the “**Definitive Documents**”), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

41. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, which charge shall not exceed an aggregate amount of CA\$1,200,000 plus interest, fees and expenses, unless permitted by further Order of the Court, which DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 44 and 46 hereof.

42. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an Event of Default (as defined in the DIP Term Sheet) under the Definitive Documents, the DIP Lender, subject to the notice requirements under

the Definitive Documents, may cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Definitive Documents or the DIP Lender's Charge, make demand, accelerate payment and give other notices, or, upon four (4) business days notice to the Applicants and the Monitor and with leave of this Court, exercise any and all other rights and remedies against the Applicants or the Property under or pursuant to the Definitive Documents and the DIP Lender's Charge, including, without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against any of the Applicants and for the appointment of a trustee in bankruptcy of any of the Applicants; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of any of the Applicants or the Property.

43. **THIS COURT ORDERS** that the DIP Lender shall be treated as unaffected in any Plan filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the BIA, with respect to any advances made under the Definitive Documents.]

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

44. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge, the KERP Charge and the DIP Lender's Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of CA\$700,000);

Second – Directors' Charge (to the maximum amount of CA\$200,000);

Third – KERP Charge (to the maximum amount of CA\$487,500); and

Fourth – DIP Lender's Charge (to the maximum amount of CA\$1,200,000 plus interest, fees and expenses).

45. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

46. **THIS COURT ORDERS** that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts (including deemed trusts), liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person notwithstanding the order of perfection or attachment.

47. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court on notice to parties in interest, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the applicable Charges, or further Order of this Court.

48. **THIS COURT ORDERS** that the Charges and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges, including the DIP Lender (collectively, the “**Chargees**”) shall not otherwise be limited or impaired in any way by: (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) or receivership order(s) issued pursuant to the BIA or otherwise, or any bankruptcy order or receivership order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds any of the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by any of the Applicants of any Agreement to which any of them is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

49. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property lease.

#### **WAGE EARNER PROTECTION PROGRAM ACT**

50. **THIS COURT ORDERS** that pursuant to subsections 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act* (Canada), S.C. 2005, c. 47, s. 1, the Applicants meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, S.O.R./2008-222.

#### **SERVICE AND NOTICE**

51. **THIS COURT ORDERS** that the Monitor's obligations under Sections 23(1)(a)(i), 23(1)(a)(ii)(B), and 23(1)(a)(ii)(C) of the CCAA and the regulations made thereunder are hereby dispensed with. The Monitor shall post a notice on the website maintained by the Monitor in respect of the NOI Proceeding (which shall become the Case Website) advising of the commencement of the CCAA proceedings.

52. **THIS COURT ORDERS** that the Guide Concerning Commercial List E-Service (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List

website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended (the “**Rules of Civil Procedure**”). Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.alvarezandmarsal.com/Joriki>

53. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide or the CCAA and the regulations thereunder is not practicable, the Applicants, the Monitor and their respective counsel and agents are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission or electronic message to the Applicants’ creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown in the books and records of the Applicants and that any such service or distribution shall be deemed to be received on the earlier of (i) the date of forwarding thereof, if sent by electronic message on or prior to 5:00 p.m. (Toronto Time) (or the next business day following the date of forwarding thereof if sent on a non business day) (ii) the next business day following the date of forwarding thereof, if sent by courier, personal delivery, facsimile transmission or electronic message sent after 5:00 p.m. (Toronto Time); or (iii) on the third business day following the date of forwarding thereof, if sent by ordinary mail.

54. **THIS COURT ORDERS** that the Applicants, the Monitor and each of their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies thereof by electronic message (including by e-mail) to the Applicants’ creditors or other interested parties and their advisors, as applicable. For greater certainty, any such service or distribution shall be deemed to be in satisfaction of a legal or judicial obligation,

and notice requirements within the meaning of subsection 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

55. **THIS COURT ORDERS** that any interested party wishing to object to the relief sought in a motion brought by the Applicants or the Monitor in these CCAA proceedings shall, subject to further order of this Court, provide the service list in these proceedings with responding motion materials or a written notice (including by e-mail) stating its objection to the motion and the grounds for such objection by no later than 5:00 p.m. (Toronto Time) on the date that is two (2) days prior to the date such motion is returnable (the “**Objection Deadline**”). The Monitor shall have the ability to extend the Objection Deadline after consultation with the Applicants.

#### **PIPEDA**

56. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 and any similar legislation in any other applicable jurisdictions, the Applicants, the Monitor and their respective advisors are hereby authorized and permitted to disclose and transfer to prospective purchasers of the Applicants’ assets that are party to a non-disclosure agreement (each, a “**Potential Purchaser**”) and their respective advisors personal information of identifiable individuals, but only to the extent required to negotiate or attempt to complete a transaction in respect of the Applicants’ Business or Property (a “**Transaction**”). Each Potential Purchaser to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Transaction, and, if it does not complete a Transaction, shall return all such information to the Applicants, or, in the alternative, destroy all such information and provide confirmation of its destruction if requested by the Applicants or the Monitor. Any Potential Purchaser who completes a Transaction shall maintain and protect the privacy of such information and, upon closing of the Transaction, shall be entitled to use the personal information provided to it that is related to the Business and/or the Property acquired pursuant to the Transaction in a manner that is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Applicants or the Monitor.



**SEALING**

57. **THIS COURT ORDERS** that the Confidential Appendix to the Pre-Filing Report shall be sealed and kept confidential pending further order of this Court.

**GENERAL**

58. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder or in the interpretation of this Order.

59. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any of the Applicants, the Business or the Property.

60. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

61. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

62. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this order on not less than seven (7) days' notice to the Applicants, the Monitor and any

other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

63. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto Time) on the date of this Order without the need for entry or filing.

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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

Court File No. \_\_\_\_\_

**AND IN THE MATTER OF AND IN THE MATTER OF A PLAN OF  
COMPROMISE OR ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI  
INC.**

Applicants

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**INITIAL ORDER**

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Lawyers for the Applicants

Court File No. —————

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ————— ) ~~WEEKDAY~~ TUESDAY, THE # 28<sup>TH</sup>  
 JUSTICE — OSBORNE )  
 ) DAY OF ~~MONTH~~ JANUARY, ~~20YR~~ 2025

**IN THE MATTER OF THE COMPANIES<sup>1</sup> CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF ~~[APPLICANT'S NAME]~~ (the  
"Applicant") JORIKI TOPCO INC. AND JORIKI INC.  
(the "Applicants")**

**INITIAL ORDER**

**THIS APPLICATION**, made by the ~~Applicant, pursuant to~~ Applicants, including to  
continue the proceedings commenced by Joriki Inc. by the filing of a notice of intention to make  
a proposal under the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the  
"BIA") bearing court/estate file no. 31-3170452 (the "NOI Proceeding") under the Companies<sup>1</sup>  
Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "CCAA"), for an Initial  
Order was heard this day ~~at 330 University Avenue, Toronto, Ontario~~ [by videoconference via  
zoom].

**ON READING** the affidavit of ~~[NAME]~~ Michael G. Devon sworn ~~[DATE]~~ January 22,  
2025, and the Exhibits thereto (the "Devon Affidavit") and the pre-filing report of the proposed  
 monitor, Alvarez and Marsal Canada Inc. ("A&M") dated January ●, 2025 (the "**Pre-Filing**  
**Report**"), and on being advised that A&M was appointed as the proposal trustee in the NOI  
 Proceeding (the "**Proposal Trustee**"), and on being advised that the secured creditors who are  
 likely to be affected by the charges created herein were given notice, and on hearing the  
 submissions of counsel for ~~[NAMES], no one appearing for [NAME]~~<sup>1</sup> ~~although duly served as~~  
<sup>1</sup> ~~Include names of secured creditors or other persons who must be served before certain relief in this model Order~~  
 may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2)

~~appears from the affidavit of service of [NAME] sworn [DATE]~~the Applicants, counsel for A&M, counsel for The Bank of Nova Scotia, in its capacity as administrative agent (in such capacity, the “Agent”) for the senior lenders of the Applicants [NTD: Insert any other parties in attendance], and counsel for the other parties listed on the counsel slip, and on reading the consent of ~~[MONITOR’S NAME]~~A&M to act as the monitor (in such capacity, the “Monitor”),

## **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated<sup>2</sup> so that this Application is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Devon Affidavit.

## **APPLICATION**

3. ~~2. THIS COURT ORDERS AND DECLARES~~ that the Applicant is a companyApplicants are companies to which the CCAA applies.

4. **THIS COURT ORDERS** that the NOI Proceeding is hereby taken up and continued under the CCAA and that, as of such date, the provisions of Part III of the BIA shall have no further application to Joriki Inc., provided that (a) any and all steps, agreements and procedures validly taken, done or entered into by Joriki Inc. or the Proposal Trustee during the NOI Proceeding shall remain valid and binding, and (b) nothing herein shall affect, vary, derogate from, limit or amend, and A&M shall continue to have the benefit of, any and all of the rights,

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~~may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).~~

~~<sup>2</sup>If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.~~

approvals and protections in favour of the Proposal Trustee at law or pursuant to the BIA or otherwise.

5. THIS COURT ORDERS that, notwithstanding Section 50.4(8) of the BIA, Joriki Inc. shall not be deemed to have made an assignment in bankruptcy as a result of not having filed a proposal with the official receiver.

6. THIS COURT ORDERS that A&M may take all necessary steps in furtherance of its discharge as Proposal Trustee, including the taxation of its fees and disbursements, in the within CCAA proceedings.

### ~~PLAN OF ARRANGEMENT~~ PLAN OF ARRANGEMENT

7. ~~3.~~ THIS COURT ORDERS that the ~~Applicant~~ Applicants shall have the authority to file and may, subject to further ~~order~~ Order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

### POSSESSION OF PROPERTY AND OPERATIONS

8. ~~4.~~ THIS COURT ORDERS that the ~~Applicant~~ Applicants shall remain in possession and control of ~~its~~ their current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the ~~Applicant~~ Applicants shall continue to carry on business in a manner consistent with the preservation of ~~its~~ their business (the "Business") and the Property. The ~~Applicant is~~ Applicants are authorized and empowered to continue to retain and employ the employees, consultants, contractors, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by ~~it~~ them, with liberty to retain such further Assistants as ~~it deems~~ they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

9. ~~5.~~ THIS COURT ORDERS that the ~~Applicant~~ Applicants shall be entitled to continue to utilize the central cash management system<sup>3</sup> currently in place as described in the ~~Affidavit of~~

<sup>3</sup> ~~This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.~~

~~[NAME] sworn [DATE] or~~ Devon Affidavit or, with the prior written consent of the Monitor and the DIP Lender (as defined below), replace it with another substantially similar central cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall: (i) not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the ~~Applicant~~ Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System; ~~shall;~~ (ii) be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the ~~Applicant~~ Applicants, pursuant to the terms of the documentation applicable to the Cash Management System; and ~~shall~~ (iii) be, in its capacity as provider of the Cash Management System, an unaffected creditor under ~~the~~ a Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.}]

10. ~~6.~~ **THIS COURT ORDERS** that the ~~Applicant~~ Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on, or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay ~~and,~~ retention payments, long term incentive plan payments and reimbursable expenses payable prior to, on, or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; ~~and~~
- (b) with the prior written consent of the Monitor, (i) amounts owing for goods and services actually supplied to any of the Applicants, and (ii) amounts owing, if any, for services rendered by the professional advisors to the Agent, in both instances prior to the date of this Order; and
- (c) ~~(b)~~ the fees and disbursements of any Assistants retained or employed by ~~the Applicant in respect of these proceedings,~~ any of the Applicants at their standard rates and charges.

11. ~~7.~~ **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the ~~Applicant~~Applicants shall be entitled but not required to pay all reasonable expenses incurred ~~by the Applicant~~ in carrying on the Business in the ordinary course after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to ~~the Applicant~~any of the Applicants on or following the date of this Order.

12. ~~8.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) ~~Quebec Pension Plan,~~ ~~and (iv)~~ income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by any of the ~~Applicant~~Applicants in connection with the sale of goods and services by any of the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and



which are attributable to or in respect of the carrying on of the Business by any of the ApplicantApplicants.

13. ~~9.~~ **THIS COURT ORDERS** that until a real property lease is disclaimed ~~for~~ **resiliated**<sup>4</sup> in accordance with the CCAA, the applicable Applicant shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

14. ~~10.~~ **THIS COURT ORDERS** that, except as specifically permitted herein, the ~~Applicant~~ isApplicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any of the ~~ApplicantApplicants~~ to any of ~~its~~their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of ~~its~~the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## RESTRUCTURING

15. ~~11.~~ **THIS COURT ORDERS** that ~~the~~each Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, ~~and~~ to dispose of redundant or non-material assets not exceeding CA\$•250,000 in any one transaction or CA\$•1,000,000 in the aggregate<sup>5</sup>;

<sup>4</sup> The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.

<sup>5</sup> Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred

- (b) disclaim such of its arrangements or agreements of any nature whatsoever with whomever, whether oral or written, as such Applicant deems appropriate, in accordance with Section 32 of the CCAA;
- (c) ~~(b)~~ terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (d) ~~(e)~~ pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing;

all of the foregoing to permit the ~~Applicant~~Applicants to proceed with an orderly restructuring of the Business ~~(the "Restructuring")~~.

16. ~~12.~~ **THIS COURT ORDERS** that the applicable Applicant shall provide each of the relevant landlords with notice of the applicable Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the applicable Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the applicable Applicant, or by further Order of this Court upon application by the applicable Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the applicable Applicant disclaims ~~for resiliates~~ the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer ~~for resiliation~~ of the lease shall be without prejudice to the ~~Applicant's~~applicable Applicant's claim to the fixtures in dispute.

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~~36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.~~

17. ~~13.~~ **THIS COURT ORDERS** that if a notice of disclaimer ~~for resiliation~~ is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer ~~for resiliation~~, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the applicable Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer ~~for resiliation~~, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the applicable Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve ~~such~~the landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE ~~APPLICANT OR THE~~ APPLICANTS, THEIR BUSINESS OR THEIR PROPERTY**

18. ~~14.~~ **THIS COURT ORDERS** that until and including ~~[DATE — MAX. 30 DAYS]~~ February 28, 2025, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding", and collectively, "Proceedings") shall be commenced or continued against or in respect of any of the Applicant Applicants or the Monitor, or any of their respective employees, advisors (including counsel) or other representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Applicant Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of ~~the Applicant~~ any of the Applicants or their respective employees, advisors (including counsel) or other representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

19. ~~15.~~ **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of any of the Applicant Applicants or the Monitor, or any of their respective employees, advisors (including counsel) or other representatives acting in such capacities, or

affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the ~~Applicant~~Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower any of the ~~Applicant~~Applicants to carry on any business which ~~the Applicant is~~they are not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

## NO INTERFERENCE WITH RIGHTS

20. ~~16.~~ **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence, authorization or permit in favour of or held by any of the ~~Applicant~~Applicants, except with the prior written consent of the ~~Applicant~~Applicants and the Monitor, or leave of this Court.

## CONTINUATION OF SERVICES

21. ~~17.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with any of the ~~Applicant~~Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, cash management services, payroll services, benefit services, accounting services, insurance, transportation services, warehouse and logistics services, utility or other services to the Business or any of the ~~Applicant~~Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by ~~the Applicant, and that the Applicant~~any of the Applicants or exercising any other remedy provided under the agreements or arrangements, and that the Applicants shall be entitled to the continued use of ~~its~~their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the applicable Applicant in accordance with the normal payment practices of the applicable Applicant or such other practices

as may be agreed upon by the supplier or service provider and each ~~of the~~applicable Applicant and the Monitor, or as may be ordered by this Court.

## NON-DEROGATION OF RIGHTS

22. ~~18.~~ **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of ~~lease~~leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the ~~Applicant~~Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.<sup>6</sup>

## PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

23. ~~19.~~ **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of ~~the Applicant~~any of the Applicants (the “Directors and Officers”) with respect to any claim against the ~~directors or officers~~Directors or Officers that arose before the date hereof and that relates to any obligations of any of the ApplicantApplicants whereby the ~~directors or officers~~Directors and Officers are alleged under any law to be liable in their capacity as ~~directors or officers~~the Directors and Officers for the payment or performance of such obligations, until a ~~compromise or arrangement~~Plan in respect of the ~~Applicant~~Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the ~~Applicant~~Applicants or this Court.

## DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE

24. ~~20.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall indemnify ~~its directors and officers~~the Directors and Officers against obligations and liabilities that they may incur as

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<sup>6</sup> ~~This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

~~directors or officers of the Applicant~~ director or officer of any of the Applicants after the commencement of the within proceedings,<sup>7</sup> except to the extent that, with respect to any ~~officer~~ Director or ~~director~~ Officer, the obligation or liability was incurred as a result of the ~~director's or officer's~~ Director's or Officer's gross negligence or wilful misconduct (the "D&O Indemnity").

25. ~~21.~~ **THIS COURT ORDERS** that the ~~directors and officers of the Applicant~~ Directors and Officers shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge")<sup>8</sup> on the Property, which charge shall not exceed an aggregate amount of CA\$200,000, unless permitted by further Order of this Court, as security for the ~~indemnity~~ D&O Indemnity provided in paragraph ~~{20}~~ 24 of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~{38}~~ 44 and ~~{40}~~ 46 herein.

26. ~~22.~~ **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (ai) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and (bii) the ~~Applicant's directors and officers~~ Directors and Officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~{20}~~ 24 of this Order.

## APPOINTMENT OF MONITOR

27. ~~23.~~ **THIS COURT ORDERS** that ~~[MONITOR'S NAME]~~ A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the ~~Applicant~~ Applicants with the powers and obligations set out in the CCAA or set forth herein and that the ~~Applicant and its~~ Applicants and their shareholders, officers,

<sup>7</sup> ~~The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.~~

<sup>8</sup> ~~Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

directors, and Assistants shall advise the Monitor of all material steps taken by the ~~Applicant~~Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the ~~Monitor's~~Monitor's functions.

28. ~~24.~~ **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the ~~Applicant's~~Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the ~~Applicant~~Applicants, to the extent required by the ~~Applicant, in its~~Applicants, in their dissemination, to the DIP Lender ~~and its counsel on a [TIME INTERVAL] basis, its counsel and its financial advisor~~ of financial and other information as agreed to between the ~~Applicant~~Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis ~~to be~~as agreed with the DIP Lender;
- (d) advise the ~~Applicant in its~~Applicants in their preparation of the ~~Applicant's~~Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender ~~and, its counsel and its financial advisor~~ on a periodic basis, ~~but not less than [TIME INTERVAL], or as otherwise~~ as agreed ~~to by~~with the DIP Lender;
- (e) advise the ~~Applicant in its~~Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the ~~Applicant~~Applicants, to the extent required by the ~~Applicant~~Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the ~~Applicant~~Applicants, to the extent that is necessary to adequately assess the ~~Applicant's~~Applicants' business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

29. ~~25.~~ **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or the Property, or any part thereof.

30. ~~26.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the ~~Monitor's~~Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.



31. ~~27.~~ **THIS COURT ORDERS** ~~that~~ that the Monitor shall provide any creditor of the ~~Applicant~~Applicants and the DIP Lender with information provided by the ~~Applicant~~Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the ~~Applicant~~Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the ~~Applicant~~Applicants may agree.

32. ~~28.~~ **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, the Monitor, its directors, officers, employees, counsel and other representatives acting in such capacities shall incur no liability or obligation as a result of ~~its~~the Monitor's appointment or the carrying out by it of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA or any applicable legislation.

33. ~~29.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the ~~Applicant~~Applicants shall be paid their reasonable fees and disbursements, whether incurred prior to, on or subsequent to the date of this Order, in each case at their standard rates and charges, by the ~~Applicant~~Applicants as part of the costs of these proceedings. The ~~Applicant~~Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the ~~Applicant on a [TIME INTERVAL] basis~~Applicants on such terms as the parties may agree and, in addition, the ~~Applicant is hereby authorized to pay to the~~ Monitor, counsel to the Monitor, ~~and counsel to the Applicant, retainers in the amount[s] of \$●~~ [, respectively,] Applicants are authorized to maintain their respective retainers, if any, provided by the Applicants prior to the commencement of these proceedings, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

34. ~~30.~~ **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

35. ~~31.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, ~~if any,~~ and ~~the Applicant's~~ counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of CA\$700,000, unless permitted by further Order of this Court, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~38~~44 and ~~40~~46 hereof.

#### KEY EMPLOYEE RETENTION PLAN

36. **THIS COURT ORDERS** that the key employee retention plan (the "KERP"), as described in the Devon Affidavit and the Pre-Filing Report, is hereby authorized and approved, and the Applicants are authorized to make the payments contemplated under the KERP in accordance with the terms and conditions of the KERP, including all payments contemplated under the Pre-Filing KERP.

37. **THIS COURT ORDERS** that the key employees under the KERP shall be entitled to the benefit of and are hereby granted a charge (the "KERP Charge") on the Property, which charge shall not exceed an aggregate amount of CA\$487,500, unless permitted by further Order of this Court, to secure any payments to the key employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 44 and 46 hereof.

#### **DIP FINANCING**

38. ~~32.~~ **THIS COURT ORDERS** that the ~~Applicant is~~Applicants are hereby authorized and empowered to obtain and borrow and provide guarantees, as the case may be, under a credit facility from ~~[DIP-LENDER'S NAME] (the "~~the Senior Lenders (in such capacity, the "DIP Lender") in order to finance the ~~Applicant's~~Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed the principal amount of CA\$1,200,000 unless permitted by further Order of this Court.

39. ~~33.~~ **THIS COURT ORDERS** ~~THAT~~that such credit facility shall be on the terms and subject to the conditions set forth in the ~~commitment letter~~DIP Term Sheet between the ~~Applicant~~Applicants and the DIP Lender dated as of ~~[DATE]~~ (the "Commitment Letter"), ~~filed~~January 9, 2025, in the form attached to [NTD: To specify] with such minor modifications or amendments that may be agreed to by the parties and consented to by the Monitor (the "DIP Term Sheet").

40. ~~34.~~ **THIS COURT ORDERS** that each of the ~~Applicant~~Applicants is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, ~~the~~ "including the DIP Term Sheet, the "Definitive Documents""), as are contemplated by the ~~Commitment Letter~~DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the ~~Applicant is~~Applicants are hereby authorized and directed to pay and perform all of ~~its~~their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the ~~Commitment Letter and the~~ Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

41. ~~35.~~ **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, which ~~DIP Lender's~~ charge shall not exceed an aggregate amount of CA\$1,200,000 plus interest, fees and expenses, unless permitted by further Order of the Court, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs ~~{38}~~44 and ~~{40}~~46 hereof.

42. ~~36.~~ **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an ~~event of default~~Event of Default (as defined in the DIP Term Sheet) under the Definitive Documents ~~or the DIP Lender's Charge~~, the DIP Lender, ~~upon 90 days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant~~

~~to the Commitment Letter,~~ subject to the notice requirements under the Definitive Documents ~~and the DIP Lender's Charge, including without limitation, to,~~ may cease making advances to the ~~Applicant~~ Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the ~~Applicant~~ Applicants against the obligations of the ~~Applicant~~ Applicants to the DIP Lender under the ~~Commitment Letter, the~~ Definitive Documents or the DIP Lender's Charge, ~~to~~ make demand, accelerate payment and give other notices, or, upon four (4) business days notice to the Applicants and the Monitor and with leave of this Court, exercise any and all other rights and remedies against the Applicants or the Property under or pursuant to the Definitive Documents and the DIP Lender's Charge, including, without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against any of the ~~Applicant~~ Applicants and for the appointment of a trustee in bankruptcy of any of the ~~Applicant~~ Applicants; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of any of the ~~Applicant~~ Applicants or the Property.

43. ~~37. THIS COURT ORDERS AND DECLARES~~ that the DIP Lender shall be treated as unaffected in any ~~plan of arrangement or compromise~~ Plan filed by the ~~Applicant~~ Applicants under the CCAA, or any proposal filed by the ~~Applicant~~ Applicants under the ~~Bankruptcy and Insolvency Act of Canada (the "BIA")~~, with respect to any advances made under the Definitive Documents.]

#### VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

44. ~~38. THIS COURT ORDERS~~ that the priorities of the Directors' Charge, the Administration Charge, the KERP Charge and the DIP Lender's Charge (collectively, the "Charges"), as among them, shall be as follows<sup>9</sup>:

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<sup>9</sup> ~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA~~

First – Administration Charge (to the maximum amount of CA\$~~●~~700,000);

Second – ~~DIP Lender's Charge; and~~ Directors' Charge (to the maximum amount of CA\$200,000);

Third – ~~Directors'~~ KERP Charge (to the maximum amount of CA\$~~●~~487,500);  
and

Fourth – DIP Lender's Charge (to the maximum amount of CA\$1,200,000 plus interest, fees and expenses).

45.    ~~39.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "Charges")~~ shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

46.    ~~40.~~ **THIS COURT ORDERS** that each of the ~~Directors' Charge, the Administration Charge and the DIP Lender's Charge~~ Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts (including deemed trusts), liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person notwithstanding the order of perfection or attachment.

47.    ~~41.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court on notice to parties in interest, the ~~Applicant~~ Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge~~ Charges, unless the ~~Applicant~~ Applicants also ~~obtains~~ obtain the prior written consent of the Monitor, the DIP Lender

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~~now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

and the beneficiaries of the ~~Directors' Charge and the Administration Charge~~ applicable Charges, or further Order of this Court.

48. ~~42.~~ **THIS COURT ORDERS** that the ~~Directors' Charge, the Administration Charge, the Commitment Letter, Charges and~~ the Definitive Documents ~~and the DIP Lender's Charge~~ shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges, including the DIP Lender (collectively, the "Chargees") ~~and/or the DIP Lender thereunder~~ shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) or receivership order(s) issued pursuant to the BIA or otherwise, or any bankruptcy order or receivership order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds any of the ~~Applicant~~ Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the ~~Commitment Letter or the~~ Definitive Documents shall create or be deemed to constitute a breach by any of the ~~Applicant~~ Applicants of any Agreement to which ~~it~~ any of them is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the ~~Applicant~~ Applicants entering into the ~~Commitment Letter~~ DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the ~~Applicant~~ Applicants pursuant to this Order, ~~the Commitment Letter or the~~ Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

49. ~~43.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the ~~Applicant's~~Applicants' interest in such real property ~~leases~~lease.

### WAGE EARNER PROTECTION PROGRAM ACT

50. **THIS COURT ORDERS** that pursuant to subsections 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act* (Canada), S.C. 2005, c. 47, s. 1, the Applicants meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, S.O.R./2008-222.

### **SERVICE AND NOTICE**

51. ~~44.~~ **THIS COURT ORDERS** that the ~~Monitor shall (i) without delay, publish in [newspapers specified by the Court] a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a)~~Monitor's obligations under Sections 23(1)(a)(i), 23(1)(a)(ii)(B), and 23(1)(a)(ii)(C) of the CCAA and the regulations made thereunder, are hereby dispensed with. The Monitor shall post a notice on the website maintained by the Monitor in respect of the NOI Proceeding (which shall become the Case Website) advising of the commencement of the CCAA proceedings.

52. ~~45.~~ **THIS COURT ORDERS** that the ~~E-Service Protocol of the~~Guide Concerning Commercial List E-Service (the "~~Protocol~~Guide") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the ~~Protocol~~Guide (which can be found on the Commercial List website at ~~http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/~~http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-commercial/) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended (the "Rules of Civil Procedure"). Subject to Rule 3.01(d) of the Rules of Civil

Procedure and paragraph ~~21~~13 of the ~~Protocol~~Guide, service of documents in accordance with the ~~Protocol~~Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ~~'@':~~:  
<https://www.alvarezandmarsal.com/Joriki>

53. ~~46.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the ~~Protocol~~Guide or the CCAA and the regulations thereunder is not practicable, the ~~Applicant and~~Applicants, the Monitor and their respective counsel and agents are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding ~~true~~ copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission or electronic message to the ~~Applicant's~~Applicants' creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown ~~on~~in the books and records of the ~~Applicant~~Applicants and that any such service or distribution ~~by courier, personal delivery or facsimile transmission~~ shall be deemed to be received on the earlier of (i) the date of forwarding thereof, if sent by electronic message on or prior to 5:00 p.m. (Toronto Time) (or the next business day following the date of forwarding thereof if sent on a non business day) (ii) the next business day following the date of forwarding thereof, or if sent by ordinary mail, courier, personal delivery, facsimile transmission or electronic message sent after 5:00 p.m. (Toronto Time); or (iii) on the third business day after mailing following the date of forwarding thereof, if sent by ordinary mail.

54. **THIS COURT ORDERS** that the Applicants, the Monitor and each of their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies thereof by electronic message (including by e-mail) to the Applicants' creditors or other interested parties and their advisors, as applicable. For greater certainty, any such service or distribution shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of subsection 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

55. **THIS COURT ORDERS** that any interested party wishing to object to the relief sought in a motion brought by the Applicants or the Monitor in these CCAA proceedings shall, subject



to further order of this Court, provide the service list in these proceedings with responding motion materials or a written notice (including by e-mail) stating its objection to the motion and the grounds for such objection by no later than 5:00 p.m. (Toronto Time) on the date that is two (2) days prior to the date such motion is returnable (the “**Objection Deadline**”). The Monitor shall have the ability to extend the Objection Deadline after consultation with the Applicants.

### PIPEDA

56. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 and any similar legislation in any other applicable jurisdictions, the Applicants, the Monitor and their respective advisors are hereby authorized and permitted to disclose and transfer to prospective purchasers of the Applicants’ assets that are party to a non-disclosure agreement (each, a “**Potential Purchaser**”) and their respective advisors personal information of identifiable individuals, but only to the extent required to negotiate or attempt to complete a transaction in respect of the Applicants’ Business or Property (a “**Transaction**”). Each Potential Purchaser to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Transaction, and, if it does not complete a Transaction, shall return all such information to the Applicants, or, in the alternative, destroy all such information and provide confirmation of its destruction if requested by the Applicants or the Monitor. Any Potential Purchaser who completes a Transaction shall maintain and protect the privacy of such information and, upon closing of the Transaction, shall be entitled to use the personal information provided to it that is related to the Business and/or the Property acquired pursuant to the Transaction in a manner that is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Applicants or the Monitor.

### SEALING

57. **THIS COURT ORDERS** that the Confidential Appendix to the Pre-Filing Report shall be sealed and kept confidential pending further order of this Court.

**GENERAL**

58. ~~47.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of ~~its~~their powers and duties hereunder or in the interpretation of this Order.

59. ~~48.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any of the ~~Applicant~~Applicants, the Business or the Property.

60. ~~49.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the ~~Applicant~~Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the ~~Applicant~~Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the ~~Applicant~~Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

61. ~~50.~~ **THIS COURT ORDERS** that each of the ~~Applicant~~Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

62. ~~51.~~ **THIS COURT ORDERS** that any interested party ~~(including the Applicant and the Monitor)~~ may apply to this Court to vary or amend this ~~Order~~order on not less than seven (7) days' notice to the Applicants, the Monitor and any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

63. ~~52.~~ **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. ~~Eastern Standard/Daylight Time~~(Toronto Time) on the date of this Order without the need for entry or filing.

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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,**  
**R.S.C. 1985, c. C-36, AS AMENDED**

Court File No. \_\_\_\_\_

**AND IN THE MATTER OF AND IN THE MATTER OF A PLAN OF**  
**COMPROMISE OR ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI**  
**INC.**

Applicants

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**INITIAL ORDER**

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Barristers & Solicitors  
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Toronto, Canada M5H 2S7

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Fax: (416) 979-1234

Lawyers for the Applicants

Court File No. \_\_\_\_\_

THE HONOURABLE

)

TUESDAY, THE 28<sup>TH</sup>

JUSTICE OSBORNE

)

DAY OF JANUARY, 2025

)

**IN THE MATTER OF THE *COMPANIES' CREDITORS*  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI  
INC.**

(the “Applicants”)

**AUCTION AND LIQUIDATION APPROVAL ORDER  
(Pickering Facility)**

**THIS APPLICATION**, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for an order (this “**Order**”), among other things, approving the Auction and Liquidation Services Agreement entered into between Joriki Inc. and Maynards Industries II Canada Ltd. (the “**Liquidator**”) dated as of January 22, 2025 (the “**Auction and Liquidation Services Agreement**”) and attached to the Devon Affidavit (as defined below) and the transactions contemplated thereby, was heard this day [by videoconference via zoom].

**ON READING** the affidavit of Michael G. Devon sworn January 22, 2025, and the Exhibits thereto (the “**Devon Affidavit**”) and the pre-filing report of the proposed monitor, Alvarez and Marsal Canada Inc. (the “**Monitor**”) dated January ●, 2025, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for The Bank of Nova Scotia, in its capacity as administrative agent for the senior lenders of the Applicants, and counsel for the other parties listed on the counsel slip,

## **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Devon Affidavit, or the Auction and Liquidation Services Agreement, as applicable.

## **APPROVAL OF THE AUCTION AND LIQUIDATION SERVICES AGREEMENT**

3. **THIS COURT ORDERS** that the Auction and Liquidation Services Agreement and the transactions contemplated thereunder are hereby approved, authorized and ratified and that the execution of the Auction and Liquidation Services Agreement by Joriki Inc. is hereby approved, authorized and ratified with such minor amendments as the Applicants (with the consent of the Monitor) and the Liquidator may agree to in writing. Subject to the provisions of this Order, the Applicants are hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Auction and Liquidation Services Agreement and the transactions contemplated therein. Without limiting the foregoing, the Applicants are authorized to execute any other agreement, contract, deed or any other document, or take any other action, which could be required or be useful to give full and complete effect to the Auction and Liquidation Services Agreement.

## **THE AUCTION**

4. **THIS COURT ORDERS** that the Liquidator is authorized to conduct the Auction and the sale of the Assets in accordance with this Order and the Auction and Liquidation Services Agreement.
5. **THIS COURT ORDERS** that the Liquidator, in its capacity as agent of the Applicant, is authorized and directed to market and sell the Assets on a “final sale” and “as is, where is” basis.

6. **THIS COURT ORDERS** that upon delivery by the Liquidator of an executed bill of sale or receipt to the purchaser of one or more of the Assets (individually, the “**Purchaser**” and collectively, the “**Purchasers**”), any and all of the right, title and interest of the Applicants in such Assets shall vest absolutely in the Purchaser free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or tiled and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to or following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively “**Claims**”), including, without limitation, the Administration Charge, the Directors’ Charge, the KERP Charge and the DIP Lender’s Charge (each as defined in the Initial Order of this Court made in the within proceedings of even date herewith) and any other charges granted by this Court in these proceedings (collectively, the “**CCAA Charges**”), and (ii) all Claims, charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registration system (all of such Claims, charges (including the CCAA Charges), security interests and liens collectively referred to herein as “**Encumbrances**”), which Encumbrances, subject to this Order, will attach instead to the Gross Sale Proceeds and any other amounts received or to be received by the Applicants under the Auction and Liquidation Services Agreement, in the same order and priority as they existed as at the date hereof.
7. **THIS COURT ORDERS** that the Applicants are hereby authorized to self-liquidate or dispose of any remaining Assets located on the Premises following the Auction and are hereby authorized and directed to take any and all actions as may be necessary or desirable to implement such self-liquidation or disposal, including, without limiting the foregoing, to execute any agreement, contract, deed, bill of sale or any other document in connection with such self-liquidation.

**MISCELLANEOUS**

8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy or receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) or other applicable legislation in respect of the Applicants and any bankruptcy or receivership order issued pursuant to any such application;
- (c) any assignment in bankruptcy made in respect of the Applicants; and
- (d) any provisions of any federal or provincial legislation,

the Auction and Liquidation Services Agreement and the transactions provided for and contemplated therein shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Applicants or its property and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

**GENERAL**

9. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada,

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or any other foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to



assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

11. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
  12. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto Time) on the date of this Order without the need for entry or filing.
-

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

Court File No. \_\_\_\_\_

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
JORIKI TOPCO INC. AND JORIKI INC.**

Applicants

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**AUCTION AND LIQUIDATION  
APPROVAL ORDER  
(Pickering Facility)**

**GOODMANS LLP**

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Lawyers for the Applicants

Court File No.: \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI  
INC.**

Applicants

**CONSENT OF THE PROPOSED MONITOR**

Alvarez & Marsal Canada Inc. hereby consents to act as Court-appointed monitor of Joriki TopCo Inc. and Joriki Inc. (the "**Applicants**") in respect of these proceedings, subject to the granting of an initial order under the *Companies' Creditors Arrangement Act* (Canada) in the form included in the Applicants' application record.

Dated as of January 22, 2025

**Alvarez & Marsal Canada Inc.**

Per: \_\_\_\_\_

Name: **ALAN HUTCHENS**Title: **SENIOR VICE-PRESIDENT**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
JORIKI TOPCO INC. AND JORIKI INC.

Court File No.: \_\_\_\_\_

Applicants

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**CONSENT OF THE PROPOSED MONITOR**

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Lawyers for the Applicants

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c. C-36, AS AMENDED

Court File No. CV-25-00735458-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
JORIKI TOPCO INC. AND JORIKI INC.

Applicants

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**APPLICATON RECORD**  
(CCAA Application returnable January 28, 2025)

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